

IMPLEMENTATION OF THE UNDERGROUND STORAGE TANK PROGRAM

HEARING BEFORE THE SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE ONE HUNDRED FIRST CONGRESS SECOND SESSION

ON

S. 1560

A BILL TO SUSPEND THE ENFORCEMENT OF CERTAIN REGULATIONS
RELATING TO UNDERGROUND STORAGE TANKS, AND FOR OTHER
PURPOSES

FEBRUARY 20, 1990

Printed for the use of the
Committee on Environment and Public Works



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1990

29-919

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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IMPLEMENTATION OF THE UNDERGROUND STORAGE TANK PROGRAM

TUESDAY, FEBRUARY 20, 1990

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m. in room 406, Dirksen Senate Office Building, Hon. Max Baucus [chairman of the subcommittee] presiding.

Present: Senators Baucus, Lieberman, Chafee, Durenberger, and Simpson.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. The hearing will come to order.

This hearing is the first oversight hearing on the implementation of the underground storage tank program. Today we will review and assess the progress of implementing that program.

Over the past several months, I have received many inquiries about the storage tank program, and the general sense from the people that I have talked to is that there are both short-term and long-term problems we need to address.

In the short term, many tank owners are concerned with the availability and the affordability of financial insurance for underground tanks. Some have told me that insurance is not available. That's like trying to get life insurance for a person with lung cancer.

Others have told me that insurance is available. Several private insurance companies have said they will sell tank insurance to anyone. EPA has reported that at least 18 private companies offer insurance, and over two-thirds of the states offer insurance programs.

Over the longer term, some tank owners have told me they will have problems getting enough financing to replace their bare steel with new tanks that are protected from corrosion. They have told me that banks are not willing to lend tank owners money to replace their tanks.

These concerns are real. Many tank owners, especially small owners and operators, may have limited access to the capital they need to replace their tanks. Many of these tank owners could face costly insurance premiums, particularly if their tanks are bare steel, or if their tanks are currently leaking.

The environmental and health problems that will occur if we do not protect the public against damages from leaking tanks are just as real. We must not forget that underground storage tanks are one of the most common sources of groundwater pollution.

There are an estimated two million underground storage tanks nationwide that store petroleum, solvents, and other chemicals. One-third of these tanks are leaking. Many have poisoned the groundwater and drinking water supplies in cities and communities across the country.

Let's not forget, once these tanks contaminate our precious groundwater resources, we face an uphill battle to clean it up. The Superfund program is living proof of what can happen when we accept unsafe practices. It has shown us just how difficult and expensive it is to restore our groundwater to its pristine conditions. And it has shown us that the indirect impacts on the community undergoing the Superfund action can be just as devastating.

It has made it difficult, if not impossible, to attract new business and other investments necessary for a strong economy. No one wants to take a chance in the community whose drinking water has been poisoned, or whose environment has been degraded.

In my home state of Montana, one-third of its 11,000 tanks are considered high-risk tanks because they are made of uncoated steel, and have been around for more than 15 years. These tanks store millions of gallons of petroleum, solvents and other chemicals. Many of these tanks will leak as they corrode. In fact, in several communities in Montana some of these tanks are already leaking while others are on the verge of springing leaks.

In Big Fork, Montana, for example, 16,000 gallons of hazardous materials escaped from a corroded tank, in Great Falls, Montana, over 9,000 gallons of gasoline was also released from underground storage.

I am very sympathetic to many of the concerns that have been brought to my attention. If we are to ensure public health for everyone, we must help these tank owners with their legitimate concerns. But I am not the least bit sympathetic to anyone who is arguing for statutory changes that will threaten our public health or degrade our environment.

This brings us to the subject of today's hearings, that is, which concerns are legitimate, and require statutory changes, and which are not. I want to examine several questions. Is financial insurance in fact available? Will it be available to tank owners subject to the April and October deadlines? Is insurance likely to be affordable to small community tank owners, especially in rural communities?

What is needed to help small tank owners more easily comply with the underground storage tank requirements? Perhaps we could use some portion of the LUST trust fund as a loan guarantee that small businesses could use.

These are some of the broad questions we will be addressing in this hearing. I thank our witnesses for coming this morning and sharing their expertise, and I look forward to hearing their views.

Senator Chafee.

STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE
STATE OF RHODE ISLAND

Senator CHAFEE. Mr. Chairman, first of all I want to thank you for holding this oversight hearing. This really stems from Senator Symms' amendment to the EPA appropriations bill last fall, and at that time we promised to closely follow developments in this area. Today's hearing is a result of that effort.

The situation is somewhat different now than it was last fall. In a few weeks, the regulatory deadline for another group of tank owners will arrive. The next group, that is the one that is coming up, the smaller business, some owning as few as 12 tanks, as you mentioned, are likely to have difficulty in obtaining insurance. Indeed, I understand that one insurance group, Petromark, has discontinued writing policies.

I think probably the best way to deal with these huge cleanup costs is through State funds like those developed in Florida and Oregon. I believe the States are the key to getting these tanks cleaned up.

Mr. Chairman, just to show that this is not some esoteric exercise by some environmentalist, I have some clippings from the February 16 edition of our newspaper, dealing with one of our major towns, Wesley, located in the southwest corner of our State. This is what it says:

Governor Dupree and town officials ordered thousands of municipal water customers to severely curtail water use after an underground gasoline tank across the Pawcatuck River in Connecticut leaked up to 2,000 gallons of fuel into the underground source of most of the town's water supply. Sixty percent of the town's water supply has been shut off after detecting fuel odors in the wells.

— What we are talking about here is real. We are talking about the underground water supplies of the country. I supported this legislation in the beginning. I think probably Senator Durenberger knows more about this subject and is involved with it more than anyone on this Committee. This shows that it is a serious subject. The problem we are dealing with can cause great difficulty in other areas.

I am not throwing rocks at Connecticut, because it could well have happened the other way. It was not just something intrastate, it was something interstate that is affecting the water supplies in one of our sizeable towns. So I am interested in this testimony, and I am glad you have arranged this hearing, Mr. Chairman.

Senator Pell was planning to testify, and if he arrives, I hope he will have the opportunity, but if not, I am sure he has a statement for the record. (Senator Pell's statement may be found at p. 72.)

Senator BAUCUS. Thank you very much.

Senator Lieberman.

OPENING STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S.
SENATOR FROM THE STATE OF CONNECTICUT

Senator LIEBERMAN. Thank you very much, Mr. Chairman, and I too thank you for convening this hearing on the important underground storage tank laws.

As Senator Chafee indicated, we in Connecticut and Rhode Island saw, at the end of last week, the importance of the law be-

cause of an accident that occurred at a gas station in Stonington, Connecticut, which is right across the Pawcatuck River from Westerly, Rhode Island. This apparently was caused by some worker negligence, and there is a dispute about exactly what happened.

We in Connecticut have a pretty tough law in regard to underground storage tanks, but it was not tough enough in this case to prevent this accident from occurring. It seems pretty clear that this was a so-called older tank.

All of that brings home the fact that we have a real dilemma here in the classic sense of a dilemma. We have an environmental time bomb, which keeps going off. It is not that we are expecting this to happen on some future day. Underground oil tanks keep spoiling the groundwater supply of this country from which more than half the people depend on for their drinking water.

In Connecticut, about one-third of us derive our drinking water from groundwater. So it is a serious problem.

I understand also that the solution causes problems as well, because of the need for financial responsibility and the burden that may place on small businesspersons. But I express the concern, and adopt the concern expressed both by the Chairman and the ranking member, and I also say that as profound as the concerns are and as sensitive as I think we ought to be to the concerns of small businesspeople, we have a primary public health problem here. We ought to deal with it in that sense.

I have been spending, and all of us here have lately, a lot of time on the Clean Air Act. We learned much about the chemical components of gasoline, and when they spill, they can be very hazardous to our health.

I think we also, in this hearing, ought to focus in on the general role that EPA has played in implementing the technical provisions of this law, those that will prevent leakage and spills. The State of Connecticut and many other States have enacted tough laws of their own to upgrade underground storage tanks.

But I think it is clear that in the absence of an express delegation of a Federal program from EPA to the State, that State laws cannot replace compliance with Federal laws. Under Federal law, any tank which was installed before 1965 is required to have put in place a system to detect leaks. Now it seems to me that it is EPA's responsibility to know whether those tanks have the systems installed and whether the tanks are in fact leaking.

I know the agency has labeled its implementation of this underground storage law an exercise or an experiment in environmental federalism. But I want to explore today whether this approach is consistent with the intent of Congress in enacting these laws, and whether it will ensure that EPA will have sufficient knowledge and information to determine whether the laws are being followed.

Thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Senator. I will mention that the hole in the tank in Pawcatuck, Connecticut, came about in a classic way. The tank was a single line steel, with no monitoring device to detect leaks, and a quarter-inch hole was punched in the bottom by dropping the measuring stick in, which I guess is the classic way these holes are punched.

Senator Durenberger.

OPENING STATEMENT OF HON. DAVE DURENBERGER, U.S.
SENATOR FROM THE STATE OF MINNESOTA

Senator DURENBERGER. Thank you, Mr. Chairman. I thought it would be helpful, as we start this hearing, if we review the events which brought us to this point. Since I chaired this subcommittee, discovered the problem, and then in order to get all the rest of you interested in it, created this wonderful acronym or picked this wonderful acronym up from the EPA, the acronym being the first letters of leaking underground storage tanks so that each member of this committee could say they were tackling the LUST problem here in Washington, D.C.

Everybody got very involved at the beginning, in 1983 and 1984, in doing something about the problem. If, as I describe this, it looks like making sausage, I will acknowledge that I have made my share of that, and my share of legislation as well. In part, I think it is important that we recognize how we got to where we are today.

The RCRA Amendments in 1984 were the first recognition in Federal law of the problem. Those amendments established a regulatory program applicable to tank owners requiring leak detection, record-keeping, corrective action and secure closure of tanks. At the time the Congress passed the RCRA Amendments, the officials at EPA and officials in more than 30 of our States said that leaking underground storage tanks were the number one groundwater pollution problem in the country. We have heard some examples of that this morning.

The 1984 amendments did require tank owners to clean up leaks if they occurred. But there was no Federal trust fund to pay for the cleanups. And there was no requirement that tank owners demonstrate financial capability to take corrective action. So there was no insurance requirement.

Subsequent to the 1984 amendments, the trade associations representing various groups of tank owners, came to recognize the tremendous cleanup liability facing their members. EPA has estimated total tank cleanup cost to be as much as \$40 billion. Early in 1985, these trade associations came back to the Congress with a proposal to impose a one cent per gallon tax on gasoline sales and to put the proceeds of the tax into a trust fund, and to loan the trust fund principal to tank owners to finance tank replacements.

This was the proposal from the trade associations, and I recall that it was presented to me directly. I could not support it, and to my knowledge, no other member of the Senate introduced that concept in legislative form. But as the Superfund reauthorization legislation was moved in 1985, that concept was pursued in the House of Representatives.

The Superfund bill adopted by the House included a very large leaking underground storage tank cleanup program. It was to be financed by a Federal tax on gasoline. The House Superfund bill limited the liability of tank owners for leak cleanup costs to \$50,000. The Fund was to pay everything above the liability limit. It was a program in effect designed to transfer the liability for much of the cleanup at tens of thousands of underground tanks from the owners of the tanks to the Federal taxpayer.

The approach was uniformly opposed in the Senate. No member of this Committee at the time thought it would be appropriate that they allow the oil industry or other tank owners the cost to clean up leaking tanks. To their credit, the major oil companies also opposed this kind of cleanup program.

Nevertheless, trade associations representing the petroleum marketers and others supported some kind of tank cleanup program. So the Senate proposed a very explicit bargain in the conference. We offered to support a new Federal tax and small trust fund to clean up orphan tanks and the very large releases, and only if the tank owners would get insurance to cover costs which were reasonably insurable.

Recognizing the problems that we knew existed in the pollution liability insurance market, we allowed a broad range of tools to demonstrate financial responsibility, including state funds and risk retention groups. We also gave EPA the authority to suspend enforcement of the requirement when insurance is not available to a particular group of tank owners. That bargain was accepted by the House and supported by the trade associations. That's how we got the financial responsibility requirement.

I would like to make a further point. The regulations implementing the 1984 RCRA amendments and the 1986 cleanup program have put a great deal of unexpected pressure on the insurance requirements. Here's the problem. EPA chose to phase in the leak detection and the tank upgrade requirements over a very long period of time. Complete upgrade is not due until 1998. Some tanks won't even be tested for tightness, which is one of the big parts of the problem, until 1993.

In my view, this very long phase-in period is contrary to the intent of the legislation. I would have pursued the problem more swiftly, and perhaps we can even accelerate the schedule as we review RCRA. But as it stands now, it is a slow implementation schedule for the rules that apply to tank design and leak detection.

On the other hand, I think we are getting to our problem. The insurance requirement hits very quickly. The regulations say you don't have to comply until 1993, or 1998. But the insurance requirement hits immediately. And the insurance companies are requiring cleanups and upgrades before they will write policies for some stations.

What EPA failed to require, immediate leak detection and cleanup, is now in effect being required by the insurance companies. Cleanup is very expensive. There is pressure on the financial responsibility requirement because it is the requirement that has the teeth in it that is biting people.

I think it will be clear today that members of the Committee are very aware of the burden this program is placing on small businesses which face the tank cleanup requirements. We are also very sympathetic. Perhaps the Senate should change its view and find a way to assist with those cleanup costs. I imagine we will ask some of the members who will testify today the degree to which they are ready to support some kind of a tax increase to pay for some part of that program.

I hope it will become clear that the major financial problem is not insurance. It is, as the Chairman has pointed out, and the

ranking member, and the Senator from Connecticut has also pointed out, the cleanup of very old, leaking bare steel tanks. That's the proposition here.

I continue to believe that that's an urgent national problem. It is unfortunate that the issue comes in the form of an insurance requirement. I think I have explained probably why it came as such a requirement. That makes the public policy objective—groundwater protection—much less apparent.

I would conclude, Mr. Chairman, by saying that we keep in mind throughout this hearing that there are 200,000 underground storage tanks that are, as you pointed out, pouring millions of gallons of gasoline and hazardous chemicals into drinking water wells all across the country, including my mother's birthplace, Great Falls, Montana.

All of us can be very sympathetic to the small businessmen and women of America with regard to the financial requirement, but we still need to find a way to help them and all Americans stop the damage to our drinking water supply.

Senator BAUCUS. Thank you very much, Senator.

Senator Simpson.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, I thank you very much for having this hearing. I reflect upon my nearly 12 years on the Committee. There are not many of us left.

Senator BAUCUS. You don't always have to say that.

Senator SIMPSON. Yes, I do say that. So many are still here in the Senate that have left us, there must be some reason for that. They come, they labor and move on. But you and Senator Chafee are old hands in here. I have been on it since I came to the Senate when you and I were both elected in the same year. I believe you have been on it that entire time.

Senator BAUCUS. Almost.

Senator SIMPSON. You mean you asked to get on it?

Well, enough of that.

Senator BAUCUS. You must have, too.

Senator SIMPSON. But in those years, I have found that we pass these bills that are very difficult to understand. This is not one, this is a simple one compared to some of the others we pass. They are very complex, and people don't understand them out in the real world.

We hope that they are solutions, and I vote for them, hoping that they are solutions. Then the solutions create a whole thicket of other problems. That's true in the Congress, particularly with one now affecting my area of the west, that's asbestos.

Asbestos in schools. I remember in the West Side Grade School in Cody, Wyoming, we used to run down into the basement and slash up those pipes all day long. We had swings on them, we messed around there all day and all night, and everybody is still here.

So we do that, we did it. The school districts in this country are all lathered up about asbestos hazards, now they have ripped into

the various schools. That's become an industry now, as we tear up the asbestos in schools which creates more hazard than if the stuff had just been allowed to lay around the pipes.

Asbestos in a mine, in suspension, is a lot different than in suspension wrapped around a pipe, or planted in plastic sacks with water in it and buried six feet down. The stuff is absolutely immobile. But here we go, we did it, costing the school districts. We didn't give them any money. We just said go do it.

Now there is more asbestos being released as they clean it up. They have no money to clean it up, even after we promised Federal assistance. We did that with the Safe Drinking Water Act, we told all those rural communities that they had to upgrade their drinking water systems, and do more monitoring and testing and other things. We are now causing them a great deal of financial hardship.

We grapple with the Superfund, everybody pushes them to do something, how can they? How to clean up has become an industry in itself.

So it goes, Mr. Chairman, with this leaking underground storage tank legislation, which we passed with the idea of helping protect the public health, preventing leakage of gasoline into groundwater, and the program is simply not working. One of the reasons it does not work is because we come back to another thing which is killing us with regard to all environmental legislation and that is risk assessment. Nobody knows what that is, either. It is esoterica purified.

Risk assessment. I do know that the program is not working. I don't know whether that is because EPA has not implemented it well or because the underlying legislative structure is flawed. I do know one thing clearly, and this is very real, that when I go to town meetings—and I do a lot of those, that's what I do, I don't have pollsters or run around with my finger in the wind, I have a lot of town meetings every year in little teeny places.

When you get into these western States you hear an awful lot of people talking about these pieces of legislation that cause such deep problems for those of us in the west. I can understand the heavily populated areas in Rhode Island and Connecticut, you have special problems. I want to be sensitive to those.

But when you have a State of 98,000 square miles and 470,000 people, then you can really do some other things. These problems here are severe, the financial responsibility requirements, the insurance availability, available money for State programs, we could perhaps afford to do that. The legislature is working right now on trying to get in compliance with leaking underground storage legislation.

The EPA technical assistance, state agencies are overzealous in many ways, and the list goes on. I don't think any of us that voted for this bill ever envisioned the difficulties it has produced in real life. That's why I am pleased that Senator Symms and Senator Burns and others have introduced this legislation to delay the financial responsibility requirements to give some relief to the people in rural America because I tell you, they are hurting on this one.

That is not to say that we want to keep them in business so they can continue to pollute, the issue is that we are losing little gas stations all over the west, and the product is going up. If that happened in the east where the real numbers of people are—it's happening with propane, we will hear about that—but when it happens out there where there is high altitude and low multitude, nobody responds.

I hope we will respond. I am very pleased to cosponsor it. We impose this \$1 million requirement for financial responsibility that has hindered the availability of insurance, we know that. I believe Congress needs to deal with that issue, and deal with it as honestly as we can.

I hope this legislation will receive our attention. It would reduce the financial responsibility requirements from \$1 million to \$500,000. I applaud that. On suspending the enforcement for a year, I will look forward to hearing from EPA witnesses and other people involved in the State program, and the individuals who are actually affected by the laws we write, people in real life.

I remember sometime back when we were dealing with some hazardous substance. The insurance industry was up here at the table. Everybody had been exhausted during the day and there was just a few staff left. So they began to zero in on them, and finally they said "You are going to write policies to cover this." They said "We can't, we tried that and there were three court cases that jabbed it to us, reinterpreted our policies, left us limp and we can't insure that anymore. We can't actuarially insure it."

I remember senior staff, none of them here now, said "But you will insure it." And they said "You must be goofy. We are not a charity."

That so shocked the members of the staff they just kind of crept from the room, and it left them limp for days. Imagine, an insurance company that would not insure a risk. They were saying "You will insure the risk."

That's where we are. Let's get real. Let's get honest with each other, and I thank you. I thank Chairman Burdick for setting this up, also. I want to work with you, but I think we have some problems in the real life of rural areas. Let's get things done on a case-by-case basis with reasonable insurance, reasonable financial authority, reasonable State agencies.

Thank you very much.

Senator BAUCUS. Thank you very much.

We have two illustrious members of our body here to testify here before us. One is Senator Burns, my colleague from the State of Montana, who is trying to help us find a solution here by introducing legislation. I think Senator Symms has also cosponsored or introduced similar legislation. I will leave it up to you as to who will go first.

STATEMENT OF HON. STEVE SYMMS, U.S. SENATOR FROM THE STATE OF IDAHO

Senator SYMMS. Mr. Chairman, I thank you.

This Committee is rapidly gaining the reputation as the winner of the annual Berlin Wall award. That is, we have a reputation

that we pass laws out of this Committee that literally build our own Berlin Walls in the United States of America. This program, the end result of it, is that it runs the "mom and pop" stores out of business, and leaves only the big sister seven oil companies in business. The end result is less competition, and it is probably questionable whether it improves the environment that the Committee wants to improve.

Mr. Chairman, I want to thank you for convening this hearing, and I mean this. This hearing is long overdue. The Federal Government's underground storage tank program is off the track. It literally is throwing the baby out with the bath water, and it has been for some time. It is costing the citizens in my State and around the country dearly. I assert to the Committee that the program, as currently constituted, seriously fails to accomplish the goals of insuring against contaminated groundwater.

In fact, it may contribute to a number of environmental problems in both groundwater and other forms of pollution. It does this at an unbearable economic and social cost to the citizens of this country.

As a member of the Committee, having seen the development of this program—although I didn't support it—I can tell you that it is not being administered as my colleague from Minnesota, Mr. Durenberger, advanced it before this Committee.

His concept, as I understood it, was this: Congress would first require underground storage tank owners to improve the quality of the tanks in the ground, then with this improved equipment reducing the likelihood of a leak and with monitoring sufficient to catch the leak early on before it does sufficient damage to groundwater. Tank owners would then be required to obtain insurance coverage guaranteeing the financial resources necessary to clean up a leak if one occurs.

That's not the way the program works. Tank owners are currently being faced with a mandatory \$1 million insurance requirement before they upgrade their tanks. Consequently, instead of protecting against leaks, the current program acts as a very large, very expensive band-aid. Instead of waiting until we have the ounce of prevention in place, we are smothering tank owners with a million pounds of cure.

The results of this backward approach have been catastrophic, and include a number of additional environmental problems besides merely that we are not preventing leaks. First, the cost of insurance at this point is far too high. The dollars devoted to the financial assurance program could be far better used elsewhere, improving tank quality and piping quality for one thing.

From a public health standpoint, these monies could probably save more lives if they were devoted to providing clean restrooms, Mr. Chairman. To the extent that a small gas station has limited funds with which to address health and environmental risks, the current program forces a very poor choice of priorities with substantial public health and environmental considerations necessarily suffering.

Second, many small tank owners simply cannot afford the cost of this insurance. For the lucky, this means terminating the petrole-

um marketing end of their business, a convenience store that decides to become a small grocery store instead.

In Idaho, this holds its own environmental threats. Many of the small roadside communities in Idaho centralize around one or two of these gas station-convenience store business. These establishments currently make petroleum available to the large rural population that lives scattered throughout the State. Eliminating these central gas stations does one of two things. It either forces Idahoans to drive further, consuming more gasoline on the way just to refuel, or it forces them to get a tank of their own. In the latter instance, you have merely taken one potential source of groundwater contamination, and turned into 100 or more, with a lot less monitoring and control, and more exposure to infants and children.

Third, for the unlucky petroleum marketer, there is no choice but to close the door and seek employment elsewhere. You have a worse dilemma. The heavy Federal regulation and liability that drove them out of the business in the first place also makes it nearly impossible for them to sell the business.

Mr. Chairman, to digress from my written testimony, I predict that if we do not do something to fix this problem, we will find that within two years county commissioners will be coming in asking Congress for relief because they are going to find out that they own the property, because people will stop paying taxes on it, and tell the county assessor to come and get it. It will be impossible to sell if you can't get insurance on it. The banks won't lend money on it, and the best thing for people to do is walk away from it, leave the situation for the local counties to take care of, and we will hear about it then.

The heavy Federal regulation and liability that drove them out of the business makes it nearly impossible, as I said, to sell the business. Consequently, forcing gas station owners out of business has not accomplished much in Idaho except to increase the number of abandoned or orphaned tanks.

If I remember right, abandoned and orphaned tanks were one of the principal concerns of this Committee when enacting this statute in the first place. Such tanks are 20 times more likely to be leaking and by their very definition are not monitored nor maintained. I understand that a leaking orphaned tank recently made the headlines in Montana. It is precisely this kind of environmental damage that is likely to increase if we proceed with the current program as it is.

Fourth, and lastly, small gas stations, especially those found in rural areas, are the closest things we have to a localized hazardous waste disposal system. Each station currently serves as a collection spot for antifreeze, oil, lubrication, batteries, and a variety of other substances, both sold and collected after use as waste.

For every small rural gas station we drive out of business, we spread those wastes back into people's yards, back on the south 40, their driveways, their garages, and keeping those gas stations in business does have environmental benefits of its own, even if it requires that we back off the underground tank insurance requirements for a short period of time.

Mr. Chairman, I believe that the bill that has been introduced by my colleague, Senator Burns from Montana, would put the cart

back in front of the horse. On this program, S. 1560 is pending before our Committee. The bill makes several necessary and helpful improvements on the current underground storage tank regulations, including the following:

It suspends the enforcement of insurance requirements on small gas station chains, and individual owners until EPA certifies that reasonably affordable insurance is available. It reduces the required coverage per leak from the arbitrary figure, and I repeat arbitrary figure that was picked out of a hat by some staffer on this Committee, to an amount determined by EPA but less than \$500,000. Half a million still covers more than 99 percent of all the leaks.

This provision, while it will not dramatically reduce insurance rates, will increase the number of providers. It eliminates the required coverage of third party claims on the top of cleanup costs. This requirement merely guarantees those who sue tank owners that they can win a large judgment. It has nothing to do with cleaning up the environment. This amendment will reduce the rates significantly. It requires EPA to examine the financial difficulties associated with monitoring, upgrading and replacing existing tanks and to report to Congress on ways to relieve those difficulties, so that installation of better equipment might be expedited.

Mr. Chairman, I would hope the Committee will move on this legislation as expeditiously as possible, repairing the environmental and economic damages caused by the current program.

I just want to say again, this Committee is going to win the Berlin Wall Award on an annual basis if we continue to report legislation that won't pass the Senate. Just like the noble Clean Air Bill that this Committee passed. Once it got to the Senate floor, and the Senators started discovering what is in the bill, they didn't want any part of it. That is why it has languished in the back rooms as we are talking here, and not on the Senate floor for action. Senators are beginning to see what would happen.

This is one bill that did get through the Congress. We need to fix it and do it correctly through the Committee process, or it is going to happen for us on the Senate floor. Because any Senator that has been home in recent weeks and seen the expense, as I have, for instance the St. Mary's School District is being required to spend \$125,000 to dig up six underground tanks that do not leak in order to comply with this law. The Superintendent of the Schools is outraged. They do not have \$125,000 in their budget. He would like to have the Congress send him a check for \$125,000 or leave him alone.

I think it is high time we start using some common sense with respect to the legislation that this Committee passes and work with the people in a cooperative fashion so we can have a good, clean environment, which I believe we can have, but have a common sense application to it, and not go out, and as I said earlier, throw the baby out with the bath water, which is exactly what is happening today all across rural America.

I thank you very much, Mr. Chairman.

Senator BAUCUS. Thank you very much, Senator.

Senator Burns.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM THE
STATE OF MONTANA

Senator BURNS. Thank you, Mr. Chairman. Again I want to extend my thanks to you and this Committee for holding these hearings on what I think is a very important issue, especially to small business America.

I would like to pass along the regrets of Congressman Marlenee, he was scheduled to be here this morning, but he is tied up in Ag bill hearings and won't make it here. Also, I have my written statement that I will enter into the record. We have all talked enough. I think we want to hear from some people who can enlighten us on the problems they are facing in this legislation.

S. 1560 is nothing more than a piece of legislation that sort of corrects an inequity that is in the law now. I don't think there is anybody on this Committee who wants to see this problem of underground storage continue the problem of groundwater. So there are some things we can do to help this thing along.

In Montana, we have over 18,000 tanks and projections show that 40 percent of the gas stations with town populations of less than 10,000 will close. That's 40 percent. Sixty-one percent of the gas stations with populations between 10,000 and 50,000 will close, and the closest place we will have to get gas in rural America will be up to 40 and 50 miles away.

It is hard, as Senator Simpson has stated, for people that live in high population areas, where they are piled on top of one another, to really see and understand the situation that we have in the west. No tank owner, I think, wants to pollute groundwater. There is no doubt about it.

In all of these places where you have small operators, they very seldom have city water supplies. So they are very aware of what they do to groundwater, and how it affects them. They live there. It is their community. Their families live there, and tank owners should be responsible for the leaks. We know that.

Some 30 states have established funds now in the state to help clean up those problems. Only four of them, however, have been approved by the EPA.

The owners are between a rock and a hard place, here. They want to be responsible, they want to clean up the tank situation, but along comes the rule that says they have to have \$1 million insurance and to prove liability if they have underground tanks. This does one of two things. It eliminates them from the market, the larger companies can absorb some of that cost, pass it along over several stations, and afford it.

But to a small operator who has one station and one or two tanks—and I have talked to a man in Fort Benton, Montana, who has two tanks under a building. They think the building is going to have to come down, and he doesn't have any leakage problem. In case there is, or there is a little contamination around it when they test it, I guess the building will have to come down.

But let's not confuse the issue. The money spent for insurance premiums, or \$1 million liability could better be spent for the cleanup or to find problems they might have. I would say, as Senator Symms does, that once this liability is placed on that owner, he

is just going to give the keys to the EPA and say "You have a nice gas station here. You can run it, because I can't afford to." Either that, or it makes very dishonest folks out of honest folks, because they will never report an abandoned or orphaned tank underground, and that leads to more problems yet.

The pollution liability has been difficult to insure. Petromark announced February 8 that they can no longer continue to issue new or renewal coverage after February 7, 1990. Federated Mutual Insurance Company recently announced that they intend to withdraw from states that have enacted state trust funds. These two firms alone insure 88 percent of the liability.

Looking at this increase in liability premiums of 250 to 300 percent are not uncommon. As one gas station owner described it, the Federal Government is requiring him to purchase something which is generally unavailable, and when it is available, it is so expensive he cannot afford it. Clearly, this does not do anything towards cleaning up the problem that we all face. I think it would be more environmentally sound to spend money replacing those tanks rather than spending it on costly insurance premiums.

In Montana, nearly half the station owners have no insurance coverage at all. Even if the state fund is approved, the premiums will still be around \$17,000 per tank. An average gas and grocery store like Mr. & Mrs. Eastman's up at Proctor, Montana, will have to pay 24 percent of their total gross revenues for liability insurance on their underground tank.

The Federal law does not permit the dropping of one drop of gas leaking and going into underground water. This does not change those rules at all. It just facilitates small producers so that they can at least start cleaning up the problem. The EPA is using the regulation process as a closed fist when it should have extended a hand to tank owners to come up with ways to get newer, cleaner tanks in the ground sooner.

I would also like to pass along an idea for this Committee to think over. Any time we pass laws here in Congress, why can't we facilitate some sort of an information agency within the states to advise people of what we have done and what's going to be expected of them to comply, and give them ways and means to clean it up, some suggestions.

What do we do? We pass a law, we give it to a bureaucrat, the bureaucrat has his own little world he lives in, and all at once he becomes a power broker and he does not care how it is done. We give them no technical advice, or any technology we may have to render some sort of a solution to the problem. Instead, we just go out there, enforce the law, and expect those people to do it. It is just an idea I think we should think about anytime we pass or enact laws here which would render somewhat of an injustice on the small business owners of America.

Thank you, Mr. Chairman. I appreciate that, and I will give you my statement for the record.

Senator BAUCUS. Thank you very much.

I have a couple of quick questions. Is there is a problem with tanks leaking? It should be addressed.

Senator SYMMS. Well, Mr. Chairman, a fellow in Leodore said he had a well 100 feet from his two tanks. He is closing his station

and now people will have to drive 100 miles to get gas. There may be a leaky tank here or there, I would not say there is not. But from my information, less than one percent of the underground tanks leak. Of course, those are the ones we would like to fix. What we are doing is closing the stations.

Senator BAUCUS. The question is whether there is a problem. Do you think this is a problem?

Senator BURNS. I think there are some leaking tanks around. I would say it is a problem. But I think the rule of putting this high of an insurance on it, Mr. Chairman, some of those tanks will never be reported, and we will never know about them, the location and the problems that they cause.

Senator BAUCUS. Nationwide, about 10 or 30 percent of the tanks leak. That's an estimate. I don't buy that. That has been seriously disputed, there have been studies on it. The next question is what's the solution? Just for the purpose of discussion let's assume that there is an underground storage leakage problem.

The next question is, is there a solution? Congress did pass legislation, I don't know the vote, I assume a large majority, voted for it, I don't know. I do think there is a problem with availability of insurance nowadays. There is no doubt about that. There is also a problem with affordability of insurance today for some owners. There no doubt about that either.

In addition, there is no doubt that leak detection costs, as well as the upgrade costs, are very expensive, particularly for some smaller tank owners in rural areas. So what we have to do here is fashion some kind of remedy, assuming there is a problem. I think there is a problem, frankly. I know it is a problem in my State, because there have been over 100 incidents of oil leaks and spills in my State, most of them were underground storage leaks.

The question is, do you have a broad-brush alternative kind of solution if you don't like the current law?

Senator SYMMS. I would say very simply that we have a Water Resources Department in the State of Idaho, I am sure you have one in Montana, and as Senator Burns said, over 30 States have regulations already on this—there is no solution that calls for the people that sit on the banks of the Potomac River to go out and tell those people on the banks of the Missouri River in Montana or the Snake River in Idaho that they don't know what they are doing. Those people can take care of their underground problems just fine. They don't need us to impose this kind of regulation which is costly and in my opinion detrimental. We are going to end up with a lot of abandoned tanks if we don't do something to alleviate this insurance problem.

Senator BURNS. I agree that you have to clean them up. I don't think this is the way to do it. I think we are confused. We are comparing apples and oranges here. You are forcing an owner to close his doors and go out of business and never report the tank, and it remains a problem for years to come. We have farmers and ranchers who have underground storage on their ranches. If they use their tank, they are going to have to report it; they are going to have to come up with the same insurance policy, even if they dig it up and make sure it is not leaking.

That does not clean the water up. I can give you an illustration. We had underground storage in Yellowstone County. Senator Baucus, do you remember all the wells we had to put down and test that water, and how far it moved, because the tank was not leaking? When we were filling it, and over the years, there was spillage around where we filled it. When I was a commissioner, and I don't know how much money we spent, all I can tell you is it was over \$200,000, just to put wells down and see how big that flume of underground water went out in that Yellowstone Valley and how close it was going to get to the Yellowstone River.

That \$200,000 didn't help us. We found out where it was but it did not help us clean it up. If you want to take Yellowstone County, it has a very sizeable county budget, we really couldn't handle that, either. We had reserves to take care of it, but you take a county like Petroleum County, or a school district like Garfield County, or St. Mary's, Idaho, they don't have the money. They just don't have the money.

It seems like the Federal Government keeps intruding on their ways to raise taxes and to supply local services. Now we come along and say "okay, you have to get a \$1 million insurance policy on every one of your tanks that you have in county, school, or whatever." And folks, I am here to tell you, because I am an old county commissioner. The money is not there. It is not there. Let alone for the small business operators.

We want to clean it up. I have no problems with the law other than this liability we have here that is going to cost a lot of money, and it is also going to leave a lot of orphan tanks. I think if I was sitting out there on a farm right now, especially the way farming has been in the last ten years, I am not real sure whether I would report a tank that was causing problems.

Senator BAUCUS. Thank you.

Senator Chafee.

Senator CHAFEE. Mr. Chairman, first I want to thank Senators Burns and Symms for their testimony and for the efforts they are making.

I think also we have to recognize that if there is ever a case where an ounce of prevention is worth a pound of cure, it is in dealing with contamination of underground water. Once that contamination gets into the ground and toward the flumes there, it becomes incredibly difficult to negate it, or to extricate it. I think we are all conscious of that, trying to find where it is, what damage has been done, trying to relieve the damage, that's one problem.

The other problem, and this doesn't occur in your States which are so large, we have the interstate problem, as Senator Lieberman and I were discussing earlier. We had a situation where an accident that occurred across the river goes right underneath the river and into the groundwater supplies of a neighboring State. In this instance, it was my State.

It is all well and good to say leave it to the States. But what can we do when something occurs in the neighboring State? I know we have a problem, and I appreciate the points you are making about the small gas station owner and his problems trying to obtain insurance or clean up his situation, but I don't think it is adequate to

say that the cure is difficult, perhaps harsh, and therefore let's not have it.

I know that in your statement, Senator Burns, you made it clear you are out to do something about it. If you have a better way of doing it, we are interested.

Senator BURNS. Let me respond to that, Senator Chafee, like this. If you are going to put on a million dollars worth of liability, that is imposed on the big and the little businesses. If there is an inequity here when we pass these rules, it is the same rules the OSHA has that there is a \$1,000 fine for an uncovered electrical plug that should be covered. It is the same for a multinational company as it is for a little old welder down the street. It is never set to the size of what the business are.

Senator CHAFEE. Farms and residences are exempt from all that.

Senator BURNS. Don't tell the bureaucrat that out there. Because he is looking around.

Senator SYMMS. To answer the question, we could reduce the cost of what we are spending on buying insurance and spend the money cleaning up tanks, you get back to your point about an ounce of prevention being worth a pound of cure, we are spending all the money so people are just closing down. They literally are closing. I can't tell in mixed company what some of the people who have to close have told me to tell my colleagues in the Senate, they are not happy about it.

It begs for common sense. Why should someone buy \$40,000 worth of liability insurance that doesn't even sell 40,000 gallons of fuel? That's the question. It begs reality.

Senator SIMPSON. Mr. Chairman, I don't think there is any disagreement at all. I would hope that the need to clean up underground storage tanks wouldn't be left here. We all agree with that, every one of us here. But we do have different State regulations, water is the property of the State of Wyoming.

Senator Burns has said it very well. If you have your own well, and you are 40 miles from anywhere, you are not going to do things to pollute that well. That's your life. But nobody seems to understand that out here. I think that's absurd.

What do you think people are going to do? They are going to look, they are going to try to find their leaking underground tanks, they are going to dig them up and try to correct it.

But the issue here today is how this should be accomplished, and how much financial responsibility the Congress requires, and a million dollars is just too much if we are going to give the rural states some relief. That's the issue. That's the only reason to have this hearing.

Senator BAUCUS. Thank you all very much.

Next we have Don Clay, who is the Assistant Administrator for Solid Waste and Emergency Response at EPA.

I want all witnesses to know we are going to impose a five minute rule. Not only on witnesses, but on Senators.

Mr. Clay.

**STATEMENT OF DON CLAY, ASSISTANT ADMINISTRATOR FOR
SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL
PROTECTION AGENCY, WASHINGTON, DC**

Mr. CLAY. Thank you, Mr. Chairman. Good morning, I am Don Clay, the Assistant Administrator for Solid Waste and Emergency Response, of the Environmental Protection Agency. With me today is Ron Brand, the Director of the Office of Underground Storage Tanks at EPA. With your permission, I would like to make a brief statement and put the full statement into the record.

Senator BAUCUS. All statements are made a part of the record. I will ask all witnesses to summarize so that we do stay within the five minute rule.

Mr. CLAY. I think it is important to note that here, more than any other program in EPA, we set out to forge an effective partnership with the state. This is the franchising we talked about, of which there has been some discussion here this morning.

We believed that with some 750,000 facilities and about 2,000,000 tanks that this was the best way to go, so we appropriately kept the program at headquarters and the regional office very low, putting most of our attention to getting resources and improving the capabilities of the state.

We have also provided a significant amount of information to tank owners themselves. We believe that in general the approach is working, although we certainly are here to answer questions about it this morning.

In terms of achievement, we have published final rules in the fall of 1988, technical requirements for tanks. We covered new tanks, leak detection, upgrading, corrective action and financial responsibility. It is important to note, I think that farm and home motor fuel tanks of less than 1,100 gallons were in fact exempt, so they are not covered by that.

Rules were designed to provide the states with the maximum flexibility in implementing them. We went out of our way to be as least prescriptive as we could, realizing that states would have the on-site ability to provide for local circumstances, so that the east was not necessarily the west.

We also allowed a long lead time, to be phased in in order to minimize the burden on the regulatory community, which is again something we can discuss, but we went out of way to try not to do it all at once. Part of this was based on our experience in talking to states, particularly California and Florida, where they tried to go faster; and it just won't go—it will go just so fast.

The idea also was to focus on the worst problems first, since we are phasing them, we believe we are more likely to catch the leaking tanks as we go than otherwise.

EPA, in the 48 states and six territories, has entered into cooperative agreements to provide funding for site investigation and cleanup and today something like 40,000 site investigations have been done by the states. All 50 states have basic legislation in place to carry out the pollution prevention side of the program. We think that is coming along.

In fiscal year 1990 we expect to receive applications from 14 states seeking formal approval, but in the meantime, we have

formal agreements with 46 States to operate programs as implementing agencies. Therefore, the States are the ones that are going out and actually enforcing the technical requirements, inspecting the facilities, overseeing the corrective action, and providing the outreach. We have an extensive outreach effort.

Turning again to the financial responsibility, one of the subjects I want to talk about today, the financial responsibility requirements for tank owners and operators were imposed by the Superfund Amendments and Reauthorization Act of 1986 and by rule in October 1988. We have talked about the million dollars minimum coverage that is required there. Clearly this has caused a great deal of concern, both to the agency, and the members of the public, and to the members of Congress. It is a concern we share. Our objective is not to drive people out of business, but to get the environment cleaned up.

The proposals for remedying the situation include suspending enforcement of the financial responsibility either by statutory means or by an existing law, because the law did provide for the means for the Administrator after certain findings to suspend for up to six months.

However, the problem we have is that suspending enforcement does not eliminate the owner's liability; if the tank were to leak, it does not eliminate his liability to comply with other laws, Federal and state, and his culpability for citizen or state actions against him. The fact that you don't have insurance still means that you can be sued by other people, and other problems.

We also are concerned about the equity issues of this. If half the people have gotten insurance, and half have not, in a given marketing area, then it is unfair to those who went out and incurred the expense to have the others let off. That is something we have to weigh in the formula.

A concern also is that suspension may slow down the development of state funds. As I talk later, I think state funds are indeed the solution that we have to use. Suspending enforcement does not address the key problems that confront the small business, they still have leaks, they still have to pay to clean them up.

We think the viable solution is to come from the states. Thirty-four states have developed state trust funds, and for most small businesses, these trust funds are the only feasible way of complying with the Federal financial requirements.

Also, we have 11 states who developed loan programs who actually go out and use, through loans or grants, or interest payments, to help people test and in fact replace their tanks. We are encouraged by these state initiatives, and I believe this may be the only solution to the problem, letting the people on the state level do whatever they want to do and comport in their states.

We have not made a decision at this time if we are going to suspend enforcement for the latest tanks coming along, something that we are looking at very closely, something that Mr. Reilly is interested in. But we have a lot of problems that it does not solve, the fundamental problem which was well summarized by Senator Durenberger—the fact that you have to pay for all these tanks somehow, and the insurance is not necessarily the way. It is very hard to insure a burning building.

I would like to conclude, Mr. Chairman. I would be pleased to answer any questions.

Senator BAUCUS. Thank you very much, Mr. Clay.

Could you expand a little more on the criteria you are using as to whether to suspend enforcement? Secondly, when you might suspend enforcement?

Mr. CLAY. Sure. The criteria for suspending enforcement by the Administrator are spelled out in the Act, which says, among other things, that we have complaints that methods of financial assurance are generally unavailable to that class which may or may not be nationwide, we have ways of taking a reading, it could be by state or by some other class.

Senator BAUCUS. Class two and class three are the ones that are in question here, is that right?

Mr. CLAY. But that's not the class I am talking about, it's three and four in question, here.

Senator BAUCUS. That's what I meant. Three and four is the question.

Mr. CLAY. Three and four is the question, which is owners of 13 to 99 tanks and 1 to 12. Last year we meant, by all the tanks—insurance is not available in Montana, but it is in Wyoming, or the other way around, or something, so when we talk about financial assurance and being unavailable, we mean to the class. Not only the size of the thing, but the geographic location.

In addition to making the unavailability of the insurance or assurances which can mean insurance or other mechanisms, there is a second finding we have to make and that is that this class may be all the tank owners in a given state, may be in the process of developing a risk retention group or the state is in the process of developing a state fund. So we have to make two findings for any given size of the units as well as geographic distribution; one, insurance generally not available, and two, they are working on risk retention or a state fund.

As you point out, that there are two groups left, let me call them group three, which is owners of 13 to 99 tanks, the deadline for which is coming up on April 26 for the financial responsibility, and finally in October, the owners of 1 to 12 tanks, which are the smallest owners, small "mom and pop" stations as well as municipalities.

Those are two deadlines ahead of us. We have not made any decision.

Senator BAUCUS. When do you think you will make a decision? As you know, Petromark thinks there is a problem with affordability of insurance, and suggests that the agency make a very early decision so that people know.

Mr. CLAY. I don't think we have the best information available right now. The best information we have is that in group three one-third of the people have insurance. With the Petromark situation, things are rapidly changing, and that may not be. But again, the general unavailability of insurance is not enough by itself. We also have to make the finding that they are working on a risk retention group or the states. Thirty-four states are working, but the others are not.

Senator BAUCUS. As I understand it, 34 states have insurance plans, is that correct?

Mr. CLAY. They have state trust funds, which can be used for—

Senator BAUCUS. And how many of those have been submitted to the EPA for approval?

Mr. CLAY. Something like five have been approved, and 18 or something like that are pending. But we consider when they submit to us for approval to satisfy the requirements they can use them as financial assurance in the meantime. They don't have to wait for our approval to be considered that way.

Senator BAUCUS. Now, I understand though that there is a question with the banks. The banks are not clear as to whether or not they have environmental liability pending EPA's approval or disapproval of a state plan. Is that correct?

Mr. CLAY. That is correct. And that will not be solved by you. The bill we are talking about today, or our suspending enforcement—all we would do is suspend enforcement. You still could not certify to the bank that you are in conformance with all the rules, because the rule is still there, we are just not enforcing it.

That's part of the dilemma that you have. You can suspend enforcement, which means the Federal folks won't come out, that doesn't mean you are still in compliance with the law. The rule is still there, you are supposed to implement it. We are just not enforcing it.

Senator BAUCUS. That's another question. Do you think some of the smaller tank owners, that is, the smaller companies particularly in rural America are facing an unfair burden that it's financial cost, either the insurance, or the leak detection, or the upgrading, in the whole scheme of things is a big unnecessary burden for them?

Mr. CLAY. Well, we try to implement the law as written by Congress, but I think it is burdensome, I am really concerned about it.

Senator BAUCUS. So what suggestions do you have for solving that?

Mr. CLAY. I think the answer lies in State funds—the state financial insurance funds in the 11 States that have state loan programs to help them. The fundamental problem is the money, I think Senator Durenberger is right. It is not the insurance per se, it is who is going to pay for all this cleanup.

Senator BAUCUS. So the State trust funds, you think will handle the insurance problem. But yet for those tank owners that have protection and particularly upgrade costs, you are suggesting those States should develop loan programs to help alleviate those financial costs for the upgrade, is that correct?

Mr. CLAY. I think in the 11 States that have done that it seems to be working well.

Senator BAUCUS. What if we were to provide a leaky underground storage tank loan guarantee? That is, States would try to develop their loan systems and programs and if the operator is not financially solvent, that the loan is guaranteed by the trust fund? Does that make sense?

Mr. CLAY. Well, it may help solve the problem. It is up to the Congress to decide the size of the deficit and what you are going to do about it. We are not prepared at this time to go forward and

support that. The fundamental problem is that we all agree the tanks have to be cleaned up and somebody is going to have to pay for it. Insurance is just somewhat of a red herring.

Senator BAUCUS. When are you going to approve Montana's application?

Mr. CLAY. We went up to the regional offices of the state about three weeks ago. As I understand it, some time next month we should be able to approve it. It looks approvable.

Senator BAUCUS. It looks approvable? Then why don't you approve it?

Mr. CLAY. The State has agreed to make some necessary changes so it could be.

Senator BAUCUS. I urge you to move very speedily. Thank you. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. CLAY, how does one test a tank? There is a technique, and several times in your testimony, Mr. Clay, you talk about testing a tank. Briefly, how do you test a tank?

Mr. CLAY. Would you describe the leak detection test, Ron?

Senator CHAFEE. Very quickly.

Mr. BRAND. There are a variety of approaches. Probably the simplest one is they shut the tank down and pressure test it to determine the level in the tank and determine whether you are losing any product. That's called the tank tightness test.

Others are where you put monitoring wells in the excavation around the tank, you can either put an air sniffer down to see if there are vapors, or put a bailer down to see if there is liquid there.

Finally, there are in-tank gauges that are reading the tank constantly. They are automated.

That's an oversimplified answer.

Senator CHAFEE. Here we have a problem. One, let's take the small operator that is our concern here. In many instances they have older tanks. Older tanks are the more likely to be leaky tanks. Small businesses often do not have a great deal of money. So what do we do? You have somebody that does not have that much money, the tank is probably leaking, or has a good chance that it might be leaking, what can be done to help that fellow? You talk about these State programs. How does that State program work that would help one of those folks?

Mr. CLAY. There are two types of programs that I have mentioned. One is the loan assurance, and they vary by State. Typically they would provide loans of low interest or below market rate interest to the owner-operator to upgrade the tanks, to go ahead and put in the corrosion and leak detection.

Senator CHAFEE. To put corrosion resistance in the tank, don't you have to pull the tank out? Don't you have to start fresh? You can't fix up an old tank, can you?

Mr. CLAY. No. Leak detection you can do, but generally, I think you are correct, sir.

Senator CHAFEE. You are going to pull out the tank, and get a new tank, and that costs some money. What does it cost roughly—how big are these tanks in a relatively small gas station?

Mr. BRAND. Several thousand gallons, I guess. They range anywhere from 3,000 to about 8,000 or 10,000. To replace three 8,000 gallon tanks, it would cost you about \$60,000.

Senator CHAFEE. Sixty Thousand Dollars? I doubt if most of these fellows have \$60,000.

Now what happens?

Mr. CLAY. That's the problem we are facing. We are facing it in terms of them not being able to buy insurance because the insurance company wants them to clean the tanks up before they give them insurance. As pointed out in earlier testimony, the insurance companies are not charities, so they are not going to insure one that is already leaking. And that's the problem—that's the fundamental problem. If there are 200,000 tanks leaking, it costs \$100,000 to clean up after the leak and do an upgrade, that is a lot of money.

Senator CHAFEE. There is no question that the costs of cleaning up are astronomical compared to any other costs, including the costs of trying to put in decent tanks. How can they get around it? It still costs \$60,000 regardless of whether the owner is paying for it himself, or the State. Do these low-cost loans really work out?

Mr. CLAY. I want to ask Mr. Brand to respond to that. My understanding is that they have certainly tried to address the problem, and they vary. They are not all the same.

Mr. BRAND. The bulk of these have been installed in the last year or year and a half, so it is really too soon to tell. There are variety of approaches. Most of it, they will pay part of the cost, the owner-operator has to pay the other part of the costs.

But it is the only answer we have seen so far, on replacement or upgrading?

Senator CHAFEE. How hard might it be just to pump the oil or gasoline out of a tank, and leave it there, and go on to put in a new tank, not that that's inexpensive? That might cost as much, too. Maybe they wouldn't have the space to put it.

But I don't understand this problem about orphan tanks. They must pump the gasoline out first, then leave the tank. The orphan part deals with the leakage that might previously have taken place, is that it? Is that what they are talking about when they talk about orphan tanks?

Mr. CLAY. Yes, no responsible party. Most of the leaks that are being cleaned up around the country are being by responsible parties, something like 95 percent. So the state has gone in only on about 5 percent of the cases and spent the money.

Senator CHAFEE. Thank you.

Senator BAUCUS. Thank you, Senator Chafee.

Senator Lieberman.

Senator LIEBERMAN. Thank you very much, Mr. Chairman. I take it that EPA takes the position that leaking underground storage tanks are a genuine public health problem, and we ought to do something about them?

Mr. CLAY. We do.

Senator LIEBERMAN. You don't have any doubts about that?

Mr. CLAY. No. It's a serious groundwater problem.

Senator LIEBERMAN. Secondly, I thought Senator Durenberger made a good point about the timing here, that the insurance comes

on line before the replacement in so many cases, so that the insurance is naturally harder to get and more expensive because they are insuring older tanks. I presume that the length of time allowed for the replacement of the tanks was an attempt by EPA to try to show some sensitivity to people in the business because of the costs involved.

Mr. CLAY. To allow them some money to do the tanks, yes.

Senator LIEBERMAN. Do you think the insurance phase, then should have waited until later, or looking back at it, perhaps EPA has left too much time for the tanks to be replaced?

Mr. CLAY. I don't have the statutory language in front of me, but I think it says something like do it immediately, or words to that effect. I think we were trying to implement the will of Congress to put it in.

Senator LIEBERMAN. The insurance?

Mr. CLAY. Yes, which was added later.

Mr. BRAND. If I might add to that, first we were asked to do the technical standards, which we did. Two years later, in 1986, with the Superfund amendments, the trust fund was set up and at that time we were told rather than studying financial responsibility, to include it—to write regulations requiring it. That affected the timing.

Senator LIEBERMAN. Let me ask about one section of the law that is in effect, which is the question of leak detection systems. Does EPA have an adequate management system in place to be able to tell whether stations are complying with the leak detection part of the law?

Mr. CLAY. Part of our philosophy is to not expect the large Federal management system to do that, so we have to poll the states. We think the states are on top of the problem but we do not have centralized information. And again, it is a basic philosophical change that we would try to be franchising, that we would get the states to do it.

Senator LIEBERMAN. As I indicated in my opening statement, I was struck by that aspect of what you have done. It looked to me, and I urge you to correct me if I am wrong, that the model that Congress set up in the underground storage tank law was one in which EPA could delegate the administration of the Federal law to the states, so long as EPA was ultimately responsible to Congress to ensure that the Federal law was being implemented. After all, that's what we count on you to do.

Yet, I understand you had agreements with—I think you said 46 of the States. Does that really constitute delegation in the sense in which it is normally meant in Government and law?

Mr. CLAY. Well, we have 42 people at headquarters and something like 89 in the regions overlooking the State programs, working together, but it is a cooperative thing, and I think it is a reasonable way to do the program. We set out to do it with a minimum, but you can argue is that proper or not, and that is the role of Congress, to call the Administration's attention to the way we have done it.

Senator LIEBERMAN. What would you say? Or maybe you ought to leave it to us.

Mr. CLAY. No, I think it is reasonable.

Senator LIEBERMAN. Did you fulfill the responsibility EPA has to delegate under this law?

Mr. CLAY. I think we were just trying to go out and allow the state votes which we believe are most of the problem, the maximum flexibility to do what's right for them. What's right in Connecticut may be different from what's right in Wyoming.

Senator LIEBERMAN. I understand.

Mr. CLAY. The single Federal large bureaucracy in Washington did not seem the best way to do that, so we went out.

Senator LIEBERMAN. We understand that.

Mr. CLAY. We have some oversight, it isn't like we just pass out the money and walk away.

Senator LIEBERMAN. That's my question. Clearly, the amount of support you have delegated in other areas to states, but this is unprecedented. This is really more a franchise or a franchisee, and obviously you are not McDonald's. You are EPA with a specific public responsibility. Maybe it is something we should come back to. I don't know if you have any more, Mr. Brand.

Mr. BRAND. Just to give you an example, we don't just throw the program out there. Our leak detection compliance, where the people are complying with the December 22 deadline for tanks only 25 years old, we have worked with the states on a campaign that once that date came, we would send out a series of enforcement letters to tank owners and operators that are listed in the notification system as having tanks over 25 years old.

We conducted training with the states. We have conducted training with the regions. That has resulted in some states, not all, with tank owners quickly coming into compliance, getting into queue to get their tanks tested. In other states, the calls have come to the agency, but not yet to the vendors, so we are working with them.

That's an example of how we try to take it and make it happen in those states.

Senator LIEBERMAN. Maybe we will come back to that. I appreciate your answer. Just one final quick question. You heard the discussion between the Committee and Senators Symms and Burns. Is the million dollars too much based on EPA's expertise about the incidence of accidents, how much they cost to clean up, and what the liability normally is?

Mr. CLAY. A million dollars may be high, but the thing is that \$500,000 does not save a whole lot, it's the first increment that you have. Most of the settlements are less than \$500,000.

Senator LIEBERMAN. So it does not save a whole lot on the insurance premium?

Mr. CLAY. Not a whole lot.

Senator LIEBERMAN. It does not solve the problem?

Mr. CLAY. It saves some, but not half, certainly.

Senator LIEBERMAN. Understood. Thank you all very much. And thank you, Mr. Chairman.

Senator BAUCUS. Senator Simpson.

Senator SIMPSON. Thank you very much, Mr. Chairman.

You say that most of the settlements are under \$500,000, and yet we still need \$1,000,000, is that what you are saying?

Mr. CLAY. The main statute—

Senator SIMPSON. I know it is. But let's work to find out what to do with that statute. Where are your settlement ranges? What is your maximum amount of your settlement ranges?

Mr. CLAY. I don't have that information. Do you have it, Ron?

Mr. BRAND. Under the trust fund, which is where we end up paying out of the Federal funds, it looks like it is moving to about \$150,000 to \$200,000. There have been outliers that insurers tell us about, and we will have some insurers testifying later, I believe. They might give you better figures than that. The reality is that in the past the cleanups were done without the regulations. If the regulations require more, require to insure that you really cleaned up, that is clearly going to drive the price up.

Mr. CLAY. Third-party liability is almost unknown depending on what the courts come up with.

Senator SIMPSON. Yes, but I am trying to zero in on where this relief is going to be. We are trying to be thoughtful. I think all of us are trying to do that. And I think the \$1,000,000 is absurd. It was just set. And we did pass it, but I think it is absurd. Especially if your settlement areas are down to \$100,000 or \$250,000 or all of them or most of them under \$500,000, then it is absurd. I don't care if you save a nickel. You are talking about small businesspeople who are on the edge, and that's big bucks. It doesn't matter whether it is the difference between \$400 a year or \$250, that's big bucks.

I have a limited amount of time. On page 7, you say the number of insurers has increased from two in 1986 to 14 in 1990, it may not have increased the availability of insurance, and I think that's one of the things we are looking at. Do we still have 14? We have 14 insurers in existence but one is going to go out of existence, apparently, according to the testimony here.

What is the premium? What is the average premium they charge to small business in order that they meet this financial responsibility requirement?

Mr. CLAY. It is something like \$2,500 and up.

Senator SIMPSON. And up?

Mr. CLAY. Yes.

Senator SIMPSON. Up to what?

Mr. CLAY. Well, up to \$5,000 and more. It depends on how many tanks you have.

Senator SIMPSON. So if you have three tanks, \$7,500?

Mr. CLAY. Well, \$2,500 is per facility with an average of three tanks, the average small service station.

Senator SIMPSON. Okay. You mentioned in your testimony that EPA may look at geographic areas that might need regulatory relief. How seriously has EPA considered suspending the enforcement of financial requirements for those in the west or the mid-west?

Mr. CLAY. Well, that would be one of the areas we would look at. As the various financial requirements were phased in, when we did not do the suspension of enforcement for the group 2, which is the larger group, we did ask if anybody would like to petition us for an exemption, and we got our first petition last week which was for everything.

But we have always said we didn't have to make a nationwide decision, we can make it State by State.

Senator SIMPSON. But you are looking at geographic regions?

Mr. CLAY. Yes.

Senator SIMPSON. In particularly the west, and the small population areas?

Mr. CLAY. Yes, the low population areas.

Senator SIMPSON. Then on page six of your testimony, Mr. Clay, you said you take "a serious look at the problems facing these groups as the compliance deadlines approach." That's our problem. We need more than a serious look. And that's important, I appreciate your doing that, but this is more than a serious look.

People are literally going out of business. And you are aware of that, you seem very sensitive to the issue, but now—are you saying that even though you are sensitive to the issue, there is nothing more that can be done unless we do it?

Mr. CLAY. No, what I am saying is that what we can do is suspend enforcement which doesn't address the cause of the problem, which is how much money they are going to have to have in able to do this. It doesn't help with the banks, it doesn't help with the creditors, it doesn't help with a lot of other people.

It's what we can do administratively, and we will take a hard look at doing it. But that does not solve the fundamental problem.

Senator SIMPSON. Well, I think we will have to help. I hope we will from a legislative level.

In Wyoming we have an enforcement agency that is very aggressive, the Department of Environmental Quality. That's why we have an excellent environment in that State. But they really are getting the flak. They say they are doing it, but it is the EPA's fault, and yet it is the DEQ that has the fangs, and that is right there on the ground doing this to the local populace. Are you aware of that?

Mr. CLAY. Yes, that was designed to be a State-administered program.

Senator SIMPSON. But the blame-switching now is endemic and dazzling. You are aware of that, too?

Mr. CLAY. Well, I was not exactly aware that Wyoming was blaming the Federal Government. I would not be surprised. Many people do blame us. It's not surprising.

Senator SIMPSON. Especially in the west.

Mr. CLAY. Yes.

Senator SIMPSON. Finally, isn't your real problem identifying the responsible party on the site of multiple contamination? Just like Superfund?

Mr. CLAY. No, it is much easier than Superfund, because you know the station has a record of who was there and what have you. With Superfund, you are bringing in waste from all different places, and it is much more difficult. There may be some problems, but it is not nearly the same degree of problem as Superfund.

Senator SIMPSON. But the ownership of the station back through 60 or 70 years, it has been sold many times over. You don't know who's responsible out there, do you?

Mr. CLAY. The last one owning it.

Senator SIMPSON. Yes, I know. But that wasn't the guy that put the tank in. That's what puts the heat on the poor guy, unfortunately.

Mr. CLAY. Yes. He bought the liability along with the station.

Senator SIMPSON. Thank you very much, Mr. Chairman.

Senator BAUCUS. Thank you, Senator Simpson.

Senator Durenberger.

Senator DURENBERGER. Mr. Clay, let me ask you a question about the way the trust fund money is being spent. First, is EPA spending the trust fund money directly on cleanups or is it channeling the bulk of the money through cooperative agreements with the States? And how is the trust fund money being used? For example, what portion is going to on-site cleanup and what portion is going to administrative costs?

Mr. CLAY. May I provide that? The bulk of it does in fact go out to the States, some \$64,000,000. It goes to the State for implementation and enforcement, outreach and what have you. Ron, do you have the breakout?

Mr. BRAND. On the breakout—we break it out into administration, enforcement, and corrective action. The enforcement and correction action is running about 57 percent, administration and staffing—this is State money—is running about 43 percent. It has been moving from the startup time when it was as high as 57 percent, administration and staffing, more into corrective action and enforcement as the program gets further underway.

Senator DURENBERGER. I have been given to understand there is kind of a phenomenal cost recovery rate in the State tank programs. The figure 94 percent sticks in my head, like 94 percent of the cleanup costs are being recovered from tank owners. Is that correct, and if so, what can we learn from that in terms of running the Superfund?

Mr. CLAY. I think it is more that 94 percent of cleanups are being paid for by responsible parties. When the States have spent their money and try to recover their expenditures, which they get to keep, it is closer to five or ten percent, I believe, Senator.

Mr. BRAND. If I might clarify—when there is a release, and that call comes in, the first thing the State tries to do is determine who is responsible, that is, whose tank it is. When they do that, in about 95 percent of the cases now, they are finding that responsible party, and that is the party that is directly paying for that cleanup, or with their insurance, or with a State trust fund.

The Federal trust fund has only been used so far in about 315 sites where we could not find or identify a responsible party. We may go back after one after some enforcement. But the bulk of the sites have been cleaned up by the responsible parties.

Senator DURENBERGER. The initiation of cleanups were 23,600 by responsible parties, 315 with the State lead and Federal task force trust fund, and 900 initiated by the State lead and State funds. There is a difference again between this.

Mr. CLAY. The recovery again from responsible parties, in many cases here you are dealing with the spill or something like that.

You are dealing with something fairly simple compared to Superfund. Somebody is there, or at least has been there in the recent past, it may or may not be fair to pick on the last guy, but at least there is somebody that you know has been there.

Senator DURENBERGER. My last question is on the evidence that costs for cleanup are escalating substantially. Has there been a dis-

pute over how clean is clean in the tank program, in other words, you have to be superduper clean, and therefore the costs climb?

Mr. CLAY. No. We went out of our way here to not give a numerical standard for cleanup. Again, that's part of the flexibility. We say protect human health and the environment and leave it to the State to interpret that. So if the State of Wyoming wants to be different than the State of Wisconsin, they can. They get to decide. It was part of the delegations to the States. You protect human health and the environment and we won't tell you what that is.

Senator DURENBERGER. Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Mr. Durenberger. Thank you, gentlemen.

What's the answer to the question, Mr. Clay? You said you don't think suspension and enforcement gets to the heart of the problem.

Mr. CLAY. That's correct.

Senator BAUCUS. What is the heart of the problem? Is the heart of the problem just the inability of many owners to get financing to pay for the detection and upgrading, is that the heart of the problem?

Mr. CLAY. Yes, I think Senator Durenberger summed it up nicely in his opening statement—it is who is going to pay for it. We all want it cleaned up, and somebody is going to have to pay, and the question is who is going to pay?

Senator BAUCUS. So the heart of the problem is the difficulty that any of these owners have in finding the financing and paying for cleanup?

Mr. CLAY. That's right. For a small business, it is very expensive to do that.

Senator BAUCUS. And the suspension of enforcement really does not go at that problem?

Mr. CLAY. It does not go at that problem. It temporarily solves paying for insurance, but it does not relieve your liability in the meantime.

Senator BAUCUS. Thank you.

Senator CHAFEE. May I ask one quick question? Mr. Chairman, thank you.

Mr. Clay, what would happen if the Federal money were to be used to supplement the State loan programs in some fashion, which now it cannot be used for?

There is a danger of having the Feds take it overall. There is no question that the States love to have the Federal Government pay in. But suppose that the Federal money could be used as a supplement of X percent for the State loan program? Not 100 percent, but 40 percent or 50 percent, no more than that?

Mr. CLAY. Well, that would be up to the Congress to work out.

Senator CHAFEE. I know it is up to the Congress, that's why I am asking you the question.

Mr. CLAY. Yes, I understand. You have to realize that the State trust money has not been used as much yet, but as the leak detection rule goes into effect in December, we are going to have much greater use of that money for its intended purpose. So the size of the money itself—

Senator CHAFEE. You mean to clean up?

Mr. CLAY. Yes. To clean up. That's what it is for now, and as the leak detection comes in and we find we are out looking for more leaks, we probably are going to find them and they are going to be used for that. So clearly the size of the fund now would not certainly have a very large program, but it is certainly an area again that either the State or society at large that is bearing the cost has to be the ultimate solution.

Senator CHAFEE. I am not sure I understand that answer. Everybody agrees that this is an area where prevention pays off in tremendous dividends. The problem is that these small station owners, as I understand the problem, they just plain can't afford to pull out their tanks and put in new ones.

Now, the Federal money is available for cleanup.

Mr. CLAY. Yes.

Senator CHAFEE. But if we advance on the assumption that it is far better to catch it, prevent the leak from occurring, than just solely clean up, does it not make some sense to have some of the Federal money available to assist those who cannot pay for the cleanup?

Maybe everybody will come in and say "I want some of that Federal money." Do you have any recommendations for those smaller people that this Federal money could be used for, 20 percent of installation of new tanks or something like that?

Mr. CLAY. We would be willing to work with you on that. We agree prevention is the way. But already some, and we argue about how many, tanks are leaking. Maybe 200,000 tanks are leaking, and if they are already leaking and it costs \$100,000 to clean them up, we are talking about \$20 billion. So if it is only five percent of the tanks leaking, half that should be only \$10 billion. You are talking about more money to clean up than I think we are going to be seeing in the Federal pie.

Senator CHAFEE. Meanwhile, the leaks continue.

Mr. CLAY. That's right. As the leak detection is phased in, we are going to find more and more leaking and somebody is going to have to do something about them.

Senator CHAFEE. Okay. Thank you.

Senator BAUCUS. Thank you both very much. Thank you, Mr. Clay.

The next panel is Mr. Guerrero—I would actually like to combine these panels. Mr. Guerrero is an Associate Director at the General Accounting Office, Mr. Richard Reiter is the Manager of Underground Storage Tank Compliance Programs for the State of Oregon, Mr. Marshall Mott-Smith is the Environmental Administrator for the State of Florida, and Salvatore Panto is the Mayor of Easton, Pennsylvania, representing the National League of Cities.

Senator CHAFEE. Mr. Clay, Senator Burns indicated that he had some questions for you. I suppose he will submit those to you in writing, and you could respond to him by letter.

Mr. CLAY. I certainly would, sir.

Senator CHAFEE. Thank you very much.

Senator BAUCUS. Mr. Guerrero, you are first.

**STATEMENT OF PETER F. GUERRERO, ASSOCIATE DIRECTOR,
ENVIRONMENTAL PROTECTION ISSUES, RESOURCES, COMMUNI-
TY, AND ECONOMIC DEVELOPMENT DIVISION, GENERAL AC-
COUNTING OFFICE**

Mr. GUERRERO. Thank you, Mr. Chairman. We appreciate this opportunity to be here to testify on this issue. I have also taken the liberty of having, to my left, two members of my staff who have been involved in bringing GAO and your Subcommittee up to date on the status of this program—Jim Donaghy and Larry Dyckman.

In January of 1988, as you know, we were required to report on the problems that small business might be expected to have complying with the financial responsibility requirements. We said that two sources had provided virtually all tank insurance sold in the U.S. and one of them had withdrawn from the market midway through 1987.

We also found that alternatives to insurance, such as self-insurance, were not feasible for most tank owners. At the time of our review, we found that relatively few States had established trust funds that could be used as an alternative and although we said these trust funds might indeed be the only hope for small firms.

We recommended a phase-in of financial responsibility requirements to allow time for insurers to develop tank programs and tank owners to pursue insurance alternatives. Since our January, 1988 report, two developments have made it possible for more tank owners to comply with these financial requirements.

First, there are more insurance companies now offering coverage, and second, more States have created trust funds. From what we can ascertain there are about 15 insurers now offering liability insurance for underground petroleum tanks. However, two firms continue to dominate this market. One of the most active insurers, as you have heard earlier this morning, Petromark, recently announced it was suspending new insurance sales pending a review of its reserves. The other large insurer, Federated, is suspending new sales in States with State trust funds.

In discussing tank owners' insurance prospects, with representatives of EPA, the Small Business Administration, insurance companies, State agencies, and industry, we were told that tank insurance was generally available on some terms to many businesses. However, petroleum industry representatives said that insurance available to small gasoline dealers was expensive or did not always meet regulatory requirements.

Furthermore, representatives also said that many small firms were not likely to qualify for insurance. These firms will probably need to rely on the State trust funds for financial responsibility.

In our January, 1988 report we said that 12 states had established such trust funds. The situation has improved, as EPA said, there are now 34 states. Of those, 23 have been approved, and there are 11 more that are pending.

We discussed with EPA three options that it could use to provide relief to businesses that cannot comply with the deadlines that are coming up in April and October. First, EPA can revise its regulations to move compliance dates back. Secondly, it can formally suspend enforcement of the regulations as currently permitted by the

law. Third, it can exercise its discretion not to use full enforcement authority.

So far, EPA has decided to follow this last approach. Violation of the financial responsibility requirements are treated by EPA as a low priority. EPA did not formally suspend the enforcement or postpone the deadlines that went into effect last October, because it lacked evidence that insurance was generally unavailable to the larger firms. As you heard this morning, EPA does appear to be willing to do it for the next smaller category of firms that are coming due this April and October.

EPA officials did tell us they would consider any petitions for suspension or postponement and last week, a group of trade associations did in fact petition EPA to do that.

We agree with EPA that the evidence on the availability of insurance did not justify postponing compliance by the larger firms last October. However, as deadlines approach for the thousands of smaller firms, it becomes increasingly important that EPA have reasonable assurance that the insurance market or state funds will make compliance possible. In our opinion, it does not appear that EPA has such assurance.

Recently, EPA has begun to collect information on insurance availability. But this data collection effort is very limited. For example, it covers only half of the insurance companies now writing tank insurance, it does not provide much information on the insurance markets and the individual states.

We believe EPA needs to actively collect more information, so that it can determine when financial responsibility requirements should be imposed.

Mr. Chairman, I would also like to make some observations on EPA's enforcement plans. At this time, EPA plans to check on the status of enforcement of Category 1 and 2 firms, those are the larger firms, in some 13 states. EPA does not intend to actively check on compliance nationwide, and has no tank inspectors in its regional offices. It plans to rely mainly on state referrals of violations, although according to EPA, the states have also assigned enforcement a low priority.

Even if financial responsibility violations are uncovered, EPA generally does not plan to penalize firms. The low priority EPA has assigned to enforcement could lead tank owners or operators to believe that compliance is unimportant. We believe that while it is reasonable to be flexible with firms that cannot comply with the regulations despite their best efforts, a law should be enforced when it is willfully disregarded.

Senator BAUCUS. I will have to ask you to summarize.

Mr. GUERRERO. I will.

In closing, Mr. Chairman, there is too much uncertainty that the insurance market for smaller tank owners and too few states with approved trust funds to reasonably ensure that smaller firms can comply with the financial responsibility requirements. EPA needs considerably more information on insurance and state trust fund availability and costs.

In the meantime, postponing the financial responsibility deadlines for smaller firms perhaps for as long as one year may make

sense. This should give the remaining states the time needed to establish trust funds and EPA time to better assess the situation.

If deadlines are deferred, we believe it is also important for EPA to stress the enforcement of the standards for technical standards for safe tank construction and operation.

Mr. Chairman, that concludes my statement.

Senator BAUCUS. Thank you.

Next is Mr. Richard Reiter, from the State of Oregon.

STATEMENT OF RICHARD REITER, MANAGER, UNDERGROUND STORAGE TANK COMPLIANCE PROGRAM, DEPARTMENT OF ENVIRONMENTAL QUALITY, STATE OF OREGON

Mr. REITER. Mr. Chairman and members of the Committee, thank you.

My name is Richard Reiter. I am the Manager of Oregon's Department of Environmental Quality's Underground Storage Tank Compliance Program.

Oregon thanks you for this opportunity to tell you about our experience in providing financial assistance to small businesses, especially those in financial assurance categories III and IV, who are trying to comply with the recently published underground storage tank regulations. Although it may be a little premature to declare our program a success, we have reason to believe our approach has merit and the concepts are worthy of consideration by other states and this Committee.

We are finding that Oregon industry's attitude with the underground storage tank requirements is generally positive. There is general agreement that the UST technical standards and ten year phase-in are necessary to protect groundwater and are reasonable. There is less agreement on the financial responsibility requirements, particularly the need to show \$1,000,000 of coverage per occurrence, exclusive of the attorneys' costs, for small facilities.

Without specific site information on potential contamination and/or information on the condition of the tank and piping, pollution insurance is not currently available to most small businesses in Oregon. The other big question is, how can I afford these major new expenses to upgrade or replace, and to purchase insurance on a thin profit margin?

By far, most of the 3,000 motor fuel retail outlets in Oregon are independently owned and/or operated by small businesses. Fewer than 200 are owned and operated by major oil companies. Often, the property and improvements represent the net worth of the owner or operator. In some cases, this net worth upon sale represents the future retirement income of the small business owner or operator.

So while agreeing with the responsibility to protect and enhance the environment, the small business owners or operators are wondering how they can meet significantly higher operating costs and expenses, and still maintain their limited net worth in the business. Without some form of financial assistance, severe social effects such as numerous closures of small businesses and reduced availability of motor fuel in many parts of Oregon are expected.

In evaluating that situation, the Oregon legislature concluded that financial assistance was needed to bring the UST systems up to the standards and thereby make them insurable. What they passed were a series of three financial assistance programs intended to provide help to assess soil contamination, tank and piping conditions, undertake soil cleanups and upgrade or replace tank systems.

These programs are in addition to a five-year extension of the pollution equipment control equipment tax credit program which Oregon has had for about 15 years.

The first program is a direct grant reimbursement of up to 50 percent, not to exceed \$3,000, to do a site assessment and tank tightness test. If the site and tank systems are certified as being in compliance with the Oregon rules, we believe the site will be insurable at a reasonable price, at least that is what we are being told by representatives of the northwest insurance brokers.

Premiums being quoted in the northwest for clean sites with upgraded tanks varies from \$3,000 to \$5,000 per year per facility location. There is also a deductible of between \$5,000 and \$25,000. There may or may not be a slight charge for multiple facility locations by the same owner.

Northwest insurance brokers believe the annual premium cost will fall over time as an actuarial history is compiled. In addition, the information collected can be used to determine what type of soil remediation or tank upgrading program is needed to bring the facility into compliance.

A second program is a loan guarantee of 80 percent, not to exceed \$64,000 for soil remediation, upgrading or replacement. It should be noted that groundwater cleanups are not included in this program, because the cost would rapidly deplete the fund. It is unlikely that most small businesses facing a groundwater cleanup will have sufficient cash flow to finance a loan to do both the groundwater cleanup and rebuild the facility to meet new tank standards.

It is hoped that the guarantee will be a sufficient incentive to allow banks to make conventional loans for these purposes. Right now, most northwest banks are not approving loans on properties with underground tanks for fear of becoming responsible parties during a cleanup. Without the guarantee, there is insufficient collateral without the land in most motor fuel retail businesses to cover the bank's liability exposure. Hence, there are few if any new loans.

The third program creates a subsidized interest rate fixed at 7.5 percent to qualifying borrowers obtaining loans for soil remediation, upgrading, or replacement. The loan terms are not to exceed 10 years. This program not only lowers the monthly payment but significantly lowers the overall interest charges.

In conclusion, I would like to point out one other positive thing I believe is happening in Oregon. It is in partnership with a Federal agency. We are currently working with the Portland office of the Small Business Administration. They are actively interested in substituting an SBA loan guarantee for the state's guarantee after the soil remediation and system upgrade are complete. In effect, by combining our two loan guarantee programs, we will guarantee the

project during the cleanup phase, when the environmental risks are paramount, and the SBA will come in after the site is certified clean, and after the tanks are upgraded. They will then take the economic risks over the life of the loan.

With their assistance, we believe we can help some 1,000 businesses in Oregon. Without their assistance, our program only has finances for about 250 businesses.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much, Mr. Reiter.

Next is Mr. Marshall Mott-Smith.

**STATEMENT OF MARSHALL T. MOTT-SMITH, ADMINISTRATOR,
STORAGE TANK REGULATION SECTION, FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION**

Mr. MOTT-SMITH. Thank you, Mr. Chairman, and members of the Committee.

The Florida Department of Environmental Regulation appreciates the opportunity to testify before the Subcommittee on the important issue of financial responsibility requirements for petroleum underground storage tanks.

Florida has been regulating underground and above-ground storage tanks since 1983, with rules that are more stringent in many ways than the new EPA technical standards. Because the state relies on groundwater for over 90 percent of its drinking water supplies, it has stringent regulations for cleaning up sites contaminated with petroleum and petroleum products.

There are currently more than 80,000 tanks located at approximately 29,000 facilities in the state. More than 10,000 of these facilities have reported that contamination exists on the site and have applied for state trust fund assistance. The average cleanup cost ranges between \$100,000 and \$300,000 per site. Many have, and will exceed, \$1,000,000.

In 1986, the Florida legislature passed the State Underground Petroleum Environmental Response Act, or the Super Act, for short. This Act established a 10-year, \$50 million per year trust fund to pay for the cleanup of leaking underground storage tanks. These monies are raised by a 20 cent per barrel tax on petroleum products produced or transported into the state.

An amnesty program was created that provided eligible owner-operators with a choice of state funded cleanups, using the early detection incentive program, also known as the EDI program, or expense reimbursement for owner funded restoration work under the reimbursement program.

The only ineligible sites were those denying site access, those with gross negligence, or Federal facilities. The final application deadline for these amnesty programs was December 31, 1989, and approximately 9,500 facilities applied. Although the Department experienced initial delays in starting up state-administered cleanup activities, the EDI and reimbursement programs are now operating normally, facility owners are receiving reimbursement checks for the restoration work, and state contractors are cleaning up state-funded sites.

In 1988, the Florida Petroleum Marketers Association sponsored legislation in response to EPA's proposed financial responsibility regulations that would provide relatively low cost third-party liability insurance coverage and free restoration costs to eligible owner-operators of storage tank systems. The Act was called the Florida Petroleum Liability Insurance Program, or FPLIP. In 1989, this Act was amended and the name changed to the Florida Petroleum Liability Insurance and Restoration Program, FPLIRP.

In order to be eligible for the program and up to \$1 million of cleanup money from the state, the facility must be subject to, and in compliance with Department rules and sign an affidavit to that effect. The owner must also demonstrate financial responsibility by purchasing third-party liability insurance from the Department's contracted carrier, American International Group of New York, AIG, or by self-insuring using any one of the Federal financial responsibility mechanisms, such as a surety bond, letter of credit, etc.

The FPLIRP is nearing the end of its first operational year and premiums have decreased significantly. Last March, the Florida Department of Insurance approved a premium range of \$300 to \$1,500 per tank per year, with an average of \$725 per tank per year. That average is now down to \$533 per tank per year, with the low range at \$157 per tank per year.

To date, more than 7,500 tanks at 2,300 facilities have AIG policies in force and more than 2,000 facilities with approximately 14,000 tanks are participating in the FPLIRP by self-insuring.

The Super Act also gave the Department authority to contract its compliance inspection program to local governments. Twenty-four contracts have been signed to date, mostly with major urban counties containing approximately two-thirds of all registered facilities. More than 16,000 inspections have been completed to date. By this time next year, we hope to have all 67 counties under contract to perform annual compliance inspections, insurance inspection and enforcement activities.

Our statistics show a significant increase in compliance rates as a result of the financial responsibility program, and by increased inspections through local government contracting.

The Department strongly urges Congress and EPA to continue enforcement of the RCRA Subtitle I financial responsibility program. Based on our six years of experience in implementing a regulatory program for storage tanks, it is our firm belief that these financial responsibility requirements are an essential component assuring compliance with a program designed to protect our ground-water resources.

After all, if you have a house that burns down and it is not insured, it is a tragedy that only affects the owner of the house. However, if an underground storage tank leaks, and it is uninsured, it also affects the health, safety and welfare of an entire community.

Thank you, Mr. Chairman, and members of the Subcommittee.
Senator BAUCUS. Mr. Panto.

STATEMENT OF HON. SALVATORE J. PANTO, JR., MAYOR,
EASTON, PA

Mayor PANTO. Mr. Chairman, members of the Subcommittee, I am Sal Panto, Mayor of the City of Easton, Pennsylvania, member of the National League of Cities Energy, Environment, and National Resources Steering Committee.

I am here today to testify on behalf of the NLC and the 16,000 cities and towns across the nation we represent on financial responsibility requirements for municipally-owned underground storage tanks.

When Congress enacted the underground storage tank provisions, it was our perception that local governments were to be treated the same as States and Federal Government. In our comments to EPA, we specifically asked for an exemption, which EPA denied us. We have not abandoned our position on exemption, and would certainly be interested in seeing legislation that clarified that indeed, Congress did not intend for municipalities to have to meet the financial assurance requirements.

Let me make one thing perfectly clear. NLC is not suggesting that municipalities be exempted from liability. We are only saying that because of our status as governments, we should not be forced into a virtually non-existent insurance market.

An exemption would also obviate the need to suspend enforcement for municipal tank owners. We believe it would be far better public policy to encourage municipalities to expedite replacement of antiquated, inadequate tanks, rather than mandating that they spend scarce local resources on meeting the financial assurance requirements, an assurance that municipalities by their very nature will implement anyway in the exercise of our responsibility to protect public health.

We would like to discuss several issues with respect to the financial responsibility requirements. First, we believe cities and towns should be exempt because they meet the same two criteria the agency used to justify exemption for our sister governments. The municipalities certainly exist to safeguard the health and welfare of the public, our primary mission. Therefore, we have an incentive to respond properly to any leaks. City governments are almost always the first to be contacted in response to local emergencies. It is always an easier phone call to the mayor's office in city hall than the governor's office at the State capital.

EPA's second justification for the state-federal exemption was our financial stability. Unlike the Federal government, cities are for the most part prohibited from deficit spending. It is also a typical local government practice to budget contingency funds which we use to respond to foreseeable, but unplanned emergencies of manageable proportions. For those underground storage tank leaks which require new revenues to be generated, cities, like states, have the ability to tax, borrow and issue bonds. The ability to borrow means that even the most costly leaks will be manageable.

Cities almost never go out of existence, nor do their debts. Even when cities do file for bankruptcy, their debts are not forgiven. Chapter 9 of the Bankruptcy Code applicable to cities is designed

as a means for cities to restructure their debts, not to extinguish them, and to ensure our continued access to credit markets.

We believe the preponderance of small communities in the nation can deal adequately with out underground storage tanks. In preparing our comments for the Agency, NLC informally surveyed cities requesting information on underground storage tanks. Of the 217 municipalities responding to the survey, 98 had populations under 2,500, and 186 respondents had populations under 25,000.

The responses indicated that there is a correlation between city size and the number of tanks a city owns—that is, the smaller the city, the smaller the number of tanks. The average number of tanks in cities under 2,000 is one; for cities between 2,500 and 5,000 population, it is three; cities between 5,000 and 25,000 average five tanks. Cities not owning tanks ranged in population from 84 to 3,500.

Only four of the surveyed cities claimed to have pollution liability insurance in the event of a leak.

Finally, the survey revealed that only 16 cities had actually experienced a leak from municipal tanks. In general, the cities were able to finance their responses readily from available revenues or fund-raising authorities. They responded within reasonable, sometimes exemplary periods of time, and took prompt action to ensure that leaks do not recur in the future.

In Easton, we have recently expended more than \$70,000 to clean, divert, collect and properly discard No. 2 fuel oil which was leaking into the Bushkill Creek from city-owned property, even though we proved beyond a reasonable doubt that the fuel oil was not coming from our city-owned tanks.

In more recent discussions with smaller communities, we have learned that many of them have removed their municipally-owned underground tanks and have opted to purchase gasoline from local commercial establishments.

Others have moved to replace their existing tanks with tanks that meet the new standards. In my own city, we have removed six underground storage tanks, five are scheduled for removal this year, one will be replaced with an above-ground tank, and five will remain in operation. These five will continue to undergo hydrostatic tests and pressure tests of the tanks and lines.

We are very concerned about whether municipalities will be able to comply with EPA's financial responsibility requirements. Until we actually see the scheme EPA develops for municipalities, we can't answer the question. Our ability to self-insure was suspended by a provision in last year's reconciliation legislation. We have been working with various agencies to preserve our access to self-insurance. We have also expressed concerns to EPA about the October, 1990 deadline, mainly because of the need of at least 18 months to provide budgetary issues such as we need to address.

Mr. Chairman, on behalf of the National League of Cities, I would like to thank you for this opportunity and request that you take some time to read our full comment which is about 10 pages.

Thank you very much.

Senator BAUCUS. Thank you very much, Mayor Panto, we appreciate that.

Mr. Reiter, as a precedent for your State program, do you find that the loan or the guarantee program and the pollution tax credit program added together in the State of Oregon all of them together are essentially handling the problem small tank companies and small service stations have? Not so much the insurance, which I will get to later, but rather the replacement and upgrading and the leak detection?

Mr. REITER. Senator, I could not say that it will handle all. We think it is a start and our legislature will be reviewing our program come January of 1991. In fairness, it is underfunded if we are to help all 3,000 businesses. We believe we can help about 1,100 businesses do a site assessment and tank tightness test with the grant reimbursement program, and as I mentioned earlier, hopefully with SBA's involvement, we may be able to help 1,000 businesses with the soil remediation and tank upgrading or replacement.

Senator BAUCUS. What is the cost to the State of Oregon?

Mr. REITER. Our estimated cost to upgrade would be \$40,000, which includes about \$10,000 of soil remediation. To completely replace, we estimate it would be about a \$100,000 project.

Senator BAUCUS. That's the State's cost?

Mr. REITER. No, that would be the cost to the businesses.

Senator BAUCUS. What's the cost to the State of Oregon?

Mr. REITER. In theory, there is no cost as long as the loan is repaid.

Senator BAUCUS. Even with the low interest provisions?

Mr. REITER. With low interest loans we are budgeting \$3.8 million for subsidizing the loans.

Senator BAUCUS. And your pollution tax credits kick in there, too.

Mr. REITER. Yes. That's an offset against general income taxes, so I don't have an estimate of how much that would cost the State of Oregon.

Senator BAUCUS. Do you agree with Mr. Clay of EPA that the central problem is not so much insurance or enforcement suspension, but rather cost of compliance?

Mr. REITER. That was the conclusion our legislature reached. As they viewed the whole spectrum, there was a lot of pressure for them to set up a state insurance program. They concluded that because of the cost to administer it plus the potential liability of the state that they could not do that.

Senator BAUCUS. Does Oregon have a trust fund?

Mr. REITER. We have a fund to clean up abandoned sites, but not to help out responsible parties.

Senator BAUCUS. Why does Oregon not have a fund to help out responsible parties?

Mr. REITER. The same two problems—the cost to administer and the potential future unknown liability to the state.

Senator BAUCUS. So perhaps the \$1 million limit may not be necessary?

Mr. REITER. What we are finding, Senator, is that most cleanups are simple soil remediation, which is estimated to cost about \$10,000 in Oregon. If you get into a groundwater cleanup, and that's the exception in Oregon, rather than the rule, then you are looking at a project cost between \$100,000 and \$200,000. Most busi-

nesses are just facing a \$10,000 cleanup, which we believe can be funded as part of the loan.

Senator BAUCUS. What is the likelihood that you will be able to work out this arrangement with the Small Business Administration?

Mr. REITER. The arrangements are in place. Now the question is whether the banks are going to start to make the credit determination that a business is creditworthy and can repay a loan. SBA has agreed that they will be there if the bank makes the loan.

Senator BAUCUS. Mr. Guerrero, do you also agree that the essential problems are the costs of compliance, and that suspension of enforcement will not go to the heart of the problem? The cleanup and upgrade and all that, the costs are the greater problem?

Mr. GUERRERO. Actually there are two ways to characterize the problem. One way is indeed to count the costs. Smaller firms in categories III and IV we have been told by states do have, and are experiencing, considerable difficulty in obtaining bank loans to upgrade to meet the technical standards. Many states have responded the way Oregon has to help deal with that situation.

The availability of insurance is also, in large part, a cost issue as well, in that the lack of it is due to the high premiums in the sense that many firms cannot afford it.

Senator BAUCUS. What about the limit? Is that necessary in GAO's opinion?

Mr. GUERRERO. We believe that that particular limit—lowering it, as for example the proposed bills would do, to \$500,000, would probably have a small effect on premium affordability, and would probably not change significantly the affordability of the insurance. Back in 1988 when we did our original study, however, it did indicate that there might be some additional insurance underwritten if the limits were lowered. But it would not be proportional to the lowering of the limit. For example, if you cut it in half, you are not going to get twice the amount of insurance.

Senator BAUCUS. How much? If it won't stop it proportionately, what's the percentage?

Mr. GUERRERO. I don't know. I would have to look more closely at our earlier work.

Senator BAUCUS. How much would premiums be reduced if the limits were lowered from \$1 million to \$500,000?

Mr. GUERRERO. We don't have any information on that, but we are told by insurers that it is not going to be significant. It is somewhat akin to your buying an additional \$100,000 liability coverage on car insurance. You don't pay the same amount you paid for the base coverage, you pay a small increase.

Senator BAUCUS. I am trying to understand what the difference would be.

Mr. GUERRERO. We don't have that information.

Senator BAUCUS. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. I would like to ask Mr. Reiter about the Oregon situation. As I understood your program, you have three financial assistance opportunities. One of them is to replace the tank systems. But in your description, you say the third program creates a subsidized interest rate fixed at

7½ percent to qualified borrowers obtaining loans for soil remediation, upgrading and replacement.

By upgrading and replacement, do you mean replacement of the tanks?

Mr. REITER. That's correct, Senator Chafee. A business could choose to just upgrade, put in spill overflow prevention devices, leak detection, add cathodic protection. In Oregon, that is estimated to cost about \$30,000, and another \$10,000 to do soil remediation. To completely replace everything is about a \$100,000 project.

Senator CHAFEE. To completely replace the tanks?

Mr. REITER. Right.

Senator CHAFEE. Seemingly, that's what most of your people would apply for, isn't it?

Mr. REITER. We are finding an interest in replacement over upgrade for several reasons. One is that they can put in larger tanks, because they believe they will be the survivor, and they will be pumping gas.

Senator CHAFEE. What does upgrading mean, anyway?

Mr. REITER. It is putting in the devices, putting in the pollution control devices, leak detection, spill overflow full prevention and cathodic protection.

Senator CHAFEE. I guess it was Mr. Mott-Smith that said you talk about lining a tank.

Mr. REITER. Lining is an upgrade method.

Senator CHAFEE. How do you line a tank?

Mr. REITER. You enter the tank, usually you have to go down into the tank.

Senator CHAFEE. You do what?

Mr. REITER. You have to enter the tank, you will cut a hole in the top of the tank. Then they go in and sandblast the interior of the tank, then line the inside with a certain type of material that will reline the tank. Also, if there are any holes within the tank, they are plugged before relining.

Senator CHAFEE. I thought I had asked somebody previously how that could be done, and they indicated some doubt—but in any event, it is a fact, you can upgrade these tanks? So I would think everybody would do that. Isn't that simpler than putting in a whole new tank?

Mr. MOTT-SMITH. It is often perceived as a short term fix, as opposed to replacing the tank with a new system.

Senator CHAFEE. Do I understand in Florida that one can receive \$1 million to upgrade his station?

Mr. MOTT-SMITH. No, sir. The \$1 million is for cleanup. In order to be eligible for that money, you have to be subject to and in compliance with the regulations and you have to demonstrate financial responsibility, either purchasing insurance through the Department's contracted carrier, AIG, or meeting any one of those Federal mechanisms.

The state right now does not have any monies available for people to upgrade their tanks. We have had rules in effect since 1984 that have an upgrade schedule that is more stringent than that of the Federal government.

Senator CHAFEE. In your statement, at page 2, as long as site access was not denied, there was no gross negligence, owners and

operators with leaking storage tanks systems could apply for and receive up to \$1 million per site of restoration funding.

Mr. MOTT-SMITH. Yes, sir. Restoration would be cleanup.

Senator CHAFEE. In Florida, it seems to me, there is every incentive to come down hard on these operators to clean up, because practically all of your drinking water must come from the ground-water system, doesn't it?

Mr. MOTT-SMITH. Ninety percent.

Senator CHAFEE. So you have this system down there where distributors can't build tanks that aren't registered?

Mr. MOTT-SMITH. That's correct.

Senator CHAFEE. That's a pretty good provision to have.

Thank you all very much, and I appreciate the testimony.

Senator BAUCUS. Senator Burns has joined us briefly. I wonder if you have any brief questions?

Senator BURNS. Thank you. I know we are all running out of time.

Mr. Mott-Smith, would you still stand by your statement that with the competition of insurance companies coming into the business that the premium will probably go down with two companies getting out of the business?

Mr. MOTT-SMITH. We have had over 18 companies now that are selling insurance in the State, or providing the financial responsibility for these owners and operators. We have seen the premiums come down, especially on the renewals. Since Florida has an accelerated upgrade schedule for tank replacement as well as monitoring systems and overflow protection, every system in the State now has such a system, and our first tank upgrade deadline was last December. So the systems are newer in Florida and the risk is better. So insurance companies feel comfortable about writing insurance in the State.

Senator BURNS. Would you also agree that since Florida has such a high water table, you have to have more stringent rules and regulations; that in fact it becomes even more critical for the State of Florida? In other words, this particular legislation doesn't even affect Florida, does it?

Mr. MOTT-SMITH. It probably would not. I can see your concerns about areas out west where the groundwater is perhaps hundreds of feet below the surface.

Senator BURNS. And sometimes there isn't any.

Mr. MOTT-SMITH. There are, however, areas in Florida where you do need to go down to 200 feet to get groundwater. Those are mainly rural areas in the northern part.

Senator BURNS. What I am saying is that this legislation doesn't affect you in Florida at all, does it?

Mr. MOTT-SMITH. It should not. Again, we have found, though that it is some added incentive for people to comply. What we have found usually is that it is our upgrade schedule that is going to keep the small businessperson from staying in business, not so much the Federal requirements for insurance. If they are going to go out of business, our rules that are already in place are going to force them out.

Senator BURNS. Thank you all very much.

Senator BAUCUS. Thank you all for your testimony. You have been a very great help today.

We will now move to the next panel. It includes Ms. Candy Mills, from Mills Repair in Belgrade, Montana; Tally Roberts, who is the Chairman of Acme Petroleum & Fuel Co. from Gastonia, North Carolina; John Taggart from Conoco Travel Shoppe, in Bozeman, Montana; Doug Alexander, of the Petroleum Marketers Association of America, of Bozeman, Montana, as well; Ms. Lois Epstein, who is with the Environmental Defense Fund in Washington, D.C.; James Moench, who is the legislative director of the North Dakota Farmers Union of Jamestown, North Dakota; and Dick Koscielak, Senior Vice President for Agricultural Excess & Surplus Insurance Co., Cincinnati, Ohio.

I welcome everybody to the hearing. Ms. Mills has many times talked to me about the problem. She asked if we could have this hearing, and I told her we could and we would. We also told her that she could come back and testify, so we're glad to have her here.

**STATEMENT OF CANDACE CHASE MILLS, MILLS REPAIR,
BELGRADE, MT**

Ms. MILLS. Thank you, Mr. Chairman and members of the Subcommittee.

I am very pleased to be here to discuss the impact of the U.S. regulations on small businesses. In summary of my written testimony, I would like to say that I am here on my own, I am not representing any organization, I am representing my business which is a gas station on Main Street, Belgrade, Montana, U.S.A.; but I could be the owner of any one of the 73,000 service stations coast to coast that will fail as a direct result of this regulation. I support the objective of protecting human health and the environment. But tens of thousands of businesses are needlessly being bankrupted because of the methods chosen to implement the RCRA requirements.

In fact, EPA projects more small firm service stations will not survive these regulations than will survive. I believe a solution can be worked out that will achieve the ends sought by RCRA and remove the burden that has been unjustly placed on small businesses.

Any person entering a business that uses USTs now can make evaluations and decisions based on current conditions. When we made the investment in our business 10 years ago, these regulations did not exist. We did not have the benefit of considering what their impact would be before we made the investments.

The regulations contain no grandfather clause to protect us. We are not interested in going out of compliance with the regulations, but there is no way we can comply with them. My tanks were installed before 1965, my leak detection deadline has arrived, and I have spent the better part of a year trying to find a means by which we can comply.

In my written testimony I explain how one by one, all of the options were eliminated for us, and we determined that we would have to pull our tanks and quit selling gas. And how our bank was unwilling to loan us money for this procedure because we have no

collateral, we would be removing a major source of cash flow, and we could not show any ability to replace the income and repay the loan.

The only hope I could see was to appeal to you for an effective solution, and that is why I am here. The issues involved in the implementation of the regulations are complex. I would like to stress two points that have bearing on the failure of this large proportion of service stations.

The first is that many of these businesses simply do not generate enough income to cover the costs of compliance. The costs are distributed in a manner that is so disproportionate to the market that it will not be possible for smaller and older businesses to remain competitive. The cost of USTs is considered in the initial business investment, and from a business standpoint, there is no reason to replace sound tanks.

Replacement will not create a new source of income to repay the investment. On the other hand, closing or removing the tanks actually removes a major source of income for which there is no immediate replacement.

Banks are unwilling to make loans for compliance procedures for many reasons. It is difficult to determine what the actual cost of the compliance procedure will be. Companies offering the services required cannot give firm estimates because they have no way of knowing what they are going to run into once they get started on a site. Banks cannot adequately assess what their risks will be, and there are no assurances that the income of the business will support loan repayment.

A second major factor in the failures of these businesses is the phase-in period established by the EPA. The regulations require that all systems be upgraded or replaced by December, 1998, and in addition, leak detection systems must be installed prior to that date, in accordance with the five-year phase-in schedule that targets older, bare steel tanks for earlier compliance.

This causes severe imbalances in the market. Stations with earlier deadlines are being required to finance leak detection and recover the costs years before their competitors are. This situation will drive smaller, older outlets right out of the market even before the deadline for upgrades arrives.

In considering any aid packages, all of these areas of concern should be addressed.

The technical requirements are the same for large gas stations as they are for small, but the ability to recover costs is not the same. Smaller businesses will not have the ability to repay loans, even low interest loans. These are expenses, they are not investments, and they will never generate an income to pay back loans. The costs of compliance will ultimately be added to the costs of gasoline, which is where it belongs. If that cost is recovered at the refiner or wholesale level, the financial burdens of compliance will be removed from individual owners and spread out over society in a manner that would be much more equitable and allow these businesses to remain solvent.

This could be done through gas taxes or fees paid into a fund that would be used to help owners upgrade USTs. For example,

some of the unused monies in the LUST trust fund could be reappropriated to be used for funding compliance procedures.

The direction our business will follow in the next ten years is not up to us. It will follow a course mapped out by these regulations, a course that right now is leading us into severe financial hardships that will most likely result in default on our loans and bankruptcy. And we are not alone.

The course set for the gasoline industry will lead 53 percent of the small firm service stations to failure within the next 15 years, according to EPA's projections.

Senator BAUCUS. I am going to have to ask you to summarize, Candy.

Ms. MILLS. I believe that all of these adverse effects can be avoided, the objectives can be achieved and we can make it possible for small businesses to survive and comply with the regulations.

Thank you.

Senator BAUCUS. Thank you very much.

Mr. Roberts, you are next.

**STATEMENT OF F.C. "TALLY" ROBERTS, CHAIRMAN, ACME
PETROLEUM & FUEL CO., INC., GASTONIA, NC**

Mr. ROBERTS. Thank you, Mr. Chairman.

My name is Tally Roberts and I am from Gastonia, North Carolina. I live in South Carolina, and work in two Carolinas.

I am here today representing the Society of Independent Gasoline Marketers and the National Association of Convenience Stores. The combined effort of those two trade associations represents some 40 percent of the gasoline sold in the United States today, and operates some 52,000 retail outlets.

My company, Acme Petroleum, operates 125 outlets. I am one of the people that own 440 of these problems we are talking about called underground tanks. Obviously, I am perplexed about how I, as a businessman, in a now third generation business, am going to survive. I am like Candy here as a person who meets a payroll on a daily basis, Senator. I appreciate your bill, and I think it is one of the answers to our problem.

It is unfortunate that we have to come before you and talk about this problem. Somehow we have not been able to get this problem solved. We live in an environment and we believe that the bill that Senator Burns has proposed is one of the answers. We also believe that the state trust fund can and will solve part of our problem.

But to do so we must ask that the compliance date of the financial responsibility part of this legislation be moved back to December 22, 1991. In the interim period we would like to propose that some of the rules and regulations be modified in reference to clean-ups and how they are solved.

We would ask that some kind of focus group be appointed and put together as far as a trade association group, service station dealers included in that association, and work with EPA in trying to solve this problem.

I live on a lake, I have a well in my yard. That is my source of water. I am just as gravely concerned about the water in this country as the next person. I have to depend on water as a daily sub-

stance. We do not in any way propose anything that is out of the way.

Senator Durenberger, in the State Environmental Agency Report that was just put out last month, said that insurance itself is too high. It is my belief that it is too high. In our firm, we have a quote, or an estimated value, of \$322,000 last year that it would cost my firm to buy insurance. That is almost our bottom line for last year. Not 24 percent as was stated earlier, it was almost 95 percent of my bottom, that would have been devoted to insurance.

In our opinion, this is an excessive amount of money. SIGMA as an association has spent over 4,000 hours studying, trying to find players to bring to this market. You are going to hear conflicting reports as to what is available. It is my opinion that there are some insurance companies that are available, but they, as a group, are not affordable to me, as an association member of our organization.

Insurance itself is insurance. I do not understand what we are trying to do here when we talk about this financial responsibility—if a firm like ours is going to spend that much money, why not cut the rates? Find some way to do it through the State funds.

SIGMA and NACS believe that the problem is not going to go away, and we believe that on April 26, we are going to be sitting here looking at the same problem. We ask first that it be changed. The state associations or our state funds, today I think 37 of them, have been established. Only five of these funds have been approved and 18 states have been put in waiting, trying to decide what they are going to do with their funds.

Only six states have been fully operational and are paying funds. We believe that the answer to this is to take the LUST funds that are now in gear, the one-tenth of a cent Superfund that is being collected, and let that be extended for a period of time, two or three years, and funnel that money to the qualified State funds.

That money is being collected today on every gallon of gasoline that I sell, and in all of our firms that we represent.

We also would like for this Committee to look at taking us out from under the RCRA hazardous waste provision. This causes a tremendous amount of consternation in doing leases and legal things when actually, RCRA was a train leaving the station when this Committee passed it.

Thank you for letting us come, and we appreciate the opportunity.

Senator BAUCUS. Thank you very much, Mr. Roberts.

Mr. Taggart—welcome, John.

STATEMENT OF JOHN TAGGART, CONOCO TRAVEL SHOPPE, BOZEMAN, MT, ACCOMPANIED BY JIM DASKAL, GENERAL COUNSEL, SERVICE STATION DEALERS OF AMERICA

Mr. TAGGART. Thank you, Mr. Chairman and members of the Committee.

My name is John Taggart. I am President of Automotive Trades of Montana. ATOM is an affiliate of the Service Station Dealers of America, whose General Counsel, Jim Daskal, accompanies me today.

We are the single station owner operators. Like all environmental regulations, the tank rules will impact the smallest businesses the hardest. The loss of independent dealers like myself will deprive consumers of important services and price competition and leave a market dominated by Big Oil. The availability of gasoline in small towns will be in serious jeopardy if you do not take steps to help us with these regulations.

In parts of Montana already there are 50 miles between stations in many cases. There is a very important point I want to leave with you. Don't believe for one minute that Big Oil will bear the costs of these regulations.

In many cases the oil companies have dumped their older stations with the worst tanks on the dealers. In Montana, we have seen six refiners withdraw from marketing in recent years. The bottom line is that thousands of individual dealers now own stations with older tanks.

We do not have a deep pocket to fall back on.

Now let me turn to questions that you have asked, Senator Baucus.

Obtaining financing has been a serious headache as shown by the letters I have brought from my bank. Lending institutions fear that they stand to inherit liability for a tank leak. They think a leak would break the dealer financially, therefore they will have to foreclose on the note, subjecting themselves to liability including Superfund liability.

We have proposed two solutions to the problem. First, we have asked EPA to join with us in conducting educational programs for the lenders. Next, we believe that the definition of owner in RCRA must be amended and we have enclosed some language to do that.

Another major problem is the shortage of qualified contractors across the nation to do tank upgrades and replacements. With regard to financial responsibility, our views could not be more clear. For individual gasoline dealers, insurance has never been readily available, today it is simply not available. The only realistic method for our dealers to demonstrate financial responsibility is the creation of state funds like ours in Montana.

There are two major concerns we have with State funds, however. First, many of the funds do not meet all the requirements of the financial responsibility rule. Our second concern is that many state funds may not be adequately capitalized.

We strongly support a suspension of the enforcement of the financial responsibility regulations. First, methods of complying with the rule are simply not there. Second, we believe a cooling off period in order to assess the fallout from the Petromark situation is needed.

Third, we need to tie in to existing funds and to create funds in the states that do not have them. Also, time is needed for EPA to review and approve state funds.

We next turn to the issue of costs and affordability of insurance. One aspect of costs that should not be ignored is the cost of the site checks required by the insurers before they will consider issuing a policy. These tests cost thousands of dollars. This brings us to the question of affordability. We must first point out that the median net worth of a dealer firm is \$81,000. Dealers today are trying to

implement several major environmental initiatives. While the tank regulations are our top priority, we do not expect insurance to be either available or affordable anytime soon.

Finally, let's discuss the impact on small business, rural areas and solutions. Unless Federal help is forthcoming, many stations will close, rural areas will certainly be hard hit, and if we are hit with another shortage any time soon, the effects on rural America will be catastrophic.

The impact on gasoline marketing would be severely anticonsumer. We must avoid the inadvertent creation of a market controlled by the oil companies from the wellhead to the consumer's gas tank.

Accordingly, we urge you to make available to us funds to comply with these regulations. We see several ways to administer such a fund. The easiest of these to administer would be to allow the states to apply for LUST trust fund money to be used for grants or low interest loans for station equipment upgrades.

Another alternative would be to set up a Federal guaranteed loan program similar to that which exists for student loans. This would entail setting up an entity we call "Polly Mae" to administer pollution control grants and loans.

We support suspension of enforcement of the financial responsibility regulations at least until December, 1991, and we are revising existing provisions on this suspension of enforcement as they are not workable.

Senator BAUCUS. I will have to ask you to summarize, please, John.

Mr. TAGGART. Yes. Finally, let me again emphasize that no microbusiness group has ever been asked to implement so many environmental regulations at one time as have the service station dealers. Tanks are our number one priority.

Please keep this in the forefront of your thoughts as you deliberate over RCRA reauthorization as well as clean air. Programs such as Stage 2 will divert our resources from more important programs, and in effect, will rob Peter to pay Paul.

With the exception of Stage 2, we have been willing to do everything you have asked of us to protect the environment. In return we are asking your help of achieving the goal of environmental protection.

Senator BAUCUS. Thank you very much, John.

Mr. Alexander.

STATEMENT OF DOUG ALEXANDER, DIRECTOR, PETROLEUM MARKETERS ASSOCIATION OF AMERICA

Mr. ALEXANDER. Thank you very much, Mr. Chairman.

My name is Doug Alexander. I am President of Story Distributing Company, a small petroleum distribution company in Bozeman, Montana. I distribute products to retail stores, farms, commercial accounts, and to a car lot facility.

I am here today representing the Petroleum Marketers Association of America, which is known as PMAA. PMAA is a federation of 45 state and regional trade associations representing more than 10,000 independent petroleum marketers nationwide. Collectively,

these marketers sell over half the gasoline, 60 percent of the diesel fuel, and three-fourths of the home heating oil consumed in the country annually.

I currently serve as a member of the PMAA board of directors, and previously served as the director of the Montana Petroleum Marketers Association. I have served on the Montana State committee which establishes policies, procedures for tank installers as well as the committee to evaluate rules, policies and procedures to implement Montana's cleanup program.

I was fairly amused by the comments by the EPA today that our plan will be approved. I am going to hold him to that.

Senator BAUCUS. So am I.

Mr. ALEXANDER. I also serve as vice president of the Western Petroleum Marketers, which serves a six-State area.

I would like to have PMAA's full written report submitted for the record and take the time allotted to me this morning to discuss the impacts of the tank rules on my business, as well as attempt to offer some constructive solutions to the problems being faced by me and my fellow marketers.

I believe there is a general industry consensus that EPA's technical requirements regarding underground tank upgrades are tough, but in the long run fair. They have prompted a surge of underground tank replacements and upgrades.

The average marketer would spend approximately \$51,000 each in 1989, and as much as \$80,000 in 1990. This means the independent petroleum marketing segment will spend over \$1.3 billion in tank replacements and upgrades. These are not insignificant investments.

In my own business, for example, I have installed three tanks in one of my outlets. At the time of installation it was one of the most modern tank installations in the State, at a cost of \$105,000. I have removed from service 18 tanks from our served accounts, our accounts that own their own tanks. I plan to remove from service an additional nine tanks by June 1, and plan to replace six more tanks in my retail service stations by May 1.

There are two major problems I wish to touch on related to the overall tank program. First, the deadlines by which marketers and other tank owners must demonstrate financial responsibility for their underground tanks are unrealistic. Under the rules as currently prescribed, I must be able to demonstrate financial responsibility by April 26.

I do not now have insurance, nor have I had it since early last year. I dropped my coverage when my premiums increased 235 percent in a single year, for coverage that did not come close to what is required by the EPA. Despite my best efforts, I was unable to find another carrier in Montana.

I am fortunate, however, that Montana has elected to create the state trust fund that will, if finally approved by the EPA, provide me with the basic coverage I need to meet the EPA requirements. I understand that EPA has indicated its intent to approve our plan, and we will hold them to their word.

However, because the plan has not been officially approved, my banker refuses to accept this as evidence of financial responsibility.

Marketers in other States are not nearly as fortunate. According to a survey recently published by PMAA, over half the marketers subject to last October's deadline do not have insurance. Only one out of three subject to next April's deadline have coverage, and less than 25 percent subject to the October 19 deadline have coverage.

In addition, the situation does not appear to be getting better. Petromark, the second largest carrier of pollution liability insurance for marketers, is no longer accepting new business. In addition, Federated has indicated that it will not insure people where there is a state program.

I hope that based on the results of a survey of the recent developments in the insurance market, the Committee will agree that insurance is not the answer to the financial responsibility requirement. We believe that the answer must lie in the development of State trust funds similar to Montana's.

The second major difficulty faced by marketers is the difficulty in obtaining capital to finance tank upgrades and replacements. Normally, these upgrades could be financed through the local bank. However, because bankers are confusing lender liability and Superfund with liability under petroleum underground tank programs, they are becoming more and more reluctant to provide loans, and are basically not doing it any more.

I promised I would try to offer some corrective solutions. One, the financial responsibility requirement should be delayed for a sufficient period of time to allow the development of state funds which have not yet been approved or disapproved.

Two, we urge that the uses for the LUST trust fund be expanded to allow States with approved funds to receive money from the state which would be a similar responsibility for orphan leaks.

Three, we urge that Congress consider the development of a low interest loan program that would be used exclusively by small businesses to finance the cost of environmental upgrades mandated by Congress.

In conclusion, Mr. Chairman, I want to say simply that the EPA underground tank program will have a more serious impact on the service station industry—more than any other program in my memory.

I have already lost four dealer accounts which cannot meet any of the requirements of the law, because of their relatively low volumes of gasoline sold, and I may lose one that is sitting here at this table.

Several additional accounts could also close. The areas hardest hit will be the rural states. It is conceivable that someone could drive hundreds of miles in Montana and never see a service station. Adopting the recommendations I made earlier may not totally change that situation, but it would certainly improve it, and provide the operator of a small rural station every opportunity to survive.

Senator BAUCUS. Thank you very much, Doug.

Lois Epstein.

STATEMENT OF LOIS EPSTEIN, P.E., ENVIRONMENTAL DEFENSE
FUND, WASHINGTON, DC

Ms. EPSTEIN. Thank you, Mr. Chairman. Good afternoon.

I appreciate your inviting the Environmental Defense Fund to testify today.

My name is Lois Epstein, and I am an environmental engineer with the EDF program called the Environmental Information Exchange, a program that works on state level issues involving toxic chemicals and solid waste. I was assisted in the development of this testimony by Robert Esposito, an EDF economist.

I am very glad your Committee has asked me to testify on both the implementation of the technical and the financial responsibility aspects of the tank program. Too often, discussions of the implementation of the technical requirements are overshadowed by discussions of the difficulties of obtaining tank insurance.

Clearly, it is critical to prevent future leaks, which would add to the number of existing leaking tanks. Compare the number of current tank leaks—approximately 200,000 to 500,000 to the much smaller number of Federal Superfund sites, about 1,200 to date, and to the approximately 30,000 toxic waste dumpsites currently known to EPA.

Since about half the Nation relies on groundwater as a source of drinking water, and close to 100 percent of the population in rural areas drinks groundwater, it is essential that tank leaks are rapidly stopped and cleaned up, and future leaks are prevented by effective State level implementation of the technical requirements.

The financial responsibility requirements supplement the technical requirements, because when the technical requirements fail to prevent leaks—as everyone knows that in many cases they will fail to do—the financial responsibility requirements assure that any resulting leaks are promptly remediated.

From an environmental protection perspective, the quality of the technical requirements varies widely among States. The primary reason this is true is that EPA issued weak baseline technical standards for tank systems and many states know they must enact more stringent technical standards than did EPA to ensure adequate environmental protection.

Turning to the question of implementation of tank cleanup requirements, EDF is disturbed that there has been little enforcement of non-compliance with the Federal financial assurance standards for Category II tank owners and operators, those that were required to meet the October, 1989 deadline. According to a February, 1990 trade association survey, approximately 40 percent of the marketers required to meet the October deadline for financial assurance currently have not done so.

Marketers who are complying with the deadline are at a competitive disadvantage. It is therefore essential that EPA immediately adopt a more active enforcement strategy. Moreover, any changes to the financial responsibility requirements under consideration by this Committee and by EPA plainly cannot apply to Category I and II firms that willfully disregarded the past deadlines.

EDF believes that the financial responsibility rules' deadlines have had a positive impact to date, by accelerating the development of

private and State-level means of financial assurance and by forcing tank owners and operators to meet preconditions to financial assurance coverage such as tank design, testing and upgrading requirements, and site remediation requirements.

EDF continues to feel that prompt implementation of the financial responsibility requirements is important. If the evidence presented to this Committee and to EPA shows conclusively the infeasibility of meeting the upcoming deadlines, possibly because of an insurance industry "crisis" in conjunction with the lack of approvable state trust funds, EDF is prepared to support a short delay of the financial responsibility compliance dates until December 22, 1990, for Category III firms and six months later for Category IV firms.

EDF believes that these dates are soon enough that pressure will remain on States to develop approvable trust funds. These delayed compliance dates will need to be promulgated by rulemaking, since all the requirements for suspension of enforcement under RCRA Section 9003 do not yet appear to have been met.

In conjunction with any delays in compliance dates, however, EPA must ensure that a mechanism exists to accelerate the development and approval of well designed state trust funds to serve as a transitional mechanism, until a mature tank insurance industry develops. Such trust funds must enhance environmental protection, must be sufficiently capitalized, and can contain elements, if desirable, to enable smaller businesses without environmental problems to remain solvent.

EDF has several recommendations on how these funds need to be structured, and the roles EPA and states should play in data collection and fund creation. These recommendations are described in more detail in our written testimony.

It should not surprise this Committee or EPA when, despite the best efforts of states and the insurance industry, some gas stations with serious existing environmental contamination problems must close. EPA has stated that most closures of existing outlets are caused by cleanup expenses, not by the costs of the technical standards, nor by the costs of the financial responsibility requirements.

From the perspective of environmental protection, facilities with extensive contamination problems and a lack of resources to address those problems pose unacceptable risks to the environment and should be closed as soon as possible so they do not increase environmental damage.

In summary, EDF has found that implementation of the technical requirements varies widely among states. Implementation of the financial responsibility requirements has also varied, with many, though not all, states actively developing trust funds and seeking EPA approval of these funds.

Prior to the development of a mature insurance industry, one that is able to insure tanks in all states and differentiates in premium rates between the risks posed by different tank types, state trust funds may be the best means available for many tank owners and operators to comply with the financial responsibility requirements.

Clearly, EPA needs to increase its assistance to the states to enhance trust fund enactment.

I would be happy to answer any questions you may have.

Senator BAUCUS. Thank you very much, Ms. Epstein.

Next is Mr. James Moench. Mr. Moench, I understand that the Chairman of this Committee for many years was General Counsel for the North Dakota Farmers Union before he was elected to the Senate.

Mr. MOENCH. Yes, sir, he was.

Senator BAUCUS. I would like to pass on to you his best wishes, and also his reminiscences of the good times he had when he was representing the Farmers Union.

Mr. MOENCH. I appreciate that, and I will carry that back to our president.

**STATEMENT OF JAMES MOENCH, LEGISLATIVE DIRECTOR,
NORTH DAKOTA FARMERS UNION, ACCOMPANIED BY ART
PERDUE, MANAGER, FARMERS UNION OIL COMPANY OF
MINOT, ND**

Mr. MOENCH. We from North Dakota are extremely pleased to be here today on this distinguished panel of Montanans, and I appreciate the opportunity to speak to you. I have a sister living in Billings, by the way so I have enjoyed your State many times over the years. Today, we are representing 152 local affiliated coops in North Dakota, and also the Farmer Union Central Exchange, (cenex) which is a regional Farm Supply co-op, serves 11 midwestern states.

I have with me Art Perdue, who is the manager of the Farmers Union Oil Company of Minot. If time permits, he could speak to local conditions confronting the dealers there.

I think the environmental issues and the costs issues have been fairly well covered. Our estimates are for tank upgrades \$18,000 to \$35,000 and for replacement of tanks in North Dakota from \$80,000 to \$120,000.

Our State insurance department and people that follow the Industry have estimated that in North Dakota within two years the current E.P.A standards would close one-fourth of the service stations that are now open, and within five years possibly up to one-third of the stations or more would go out of Business.

We have a difficult problem in North Dakota,—a two-headed monster, if you will—on one side the upgrading of the tanks is a great expense, and on the other side, the \$1 million requirement for coverage is another great expense. The two of them seem to be mutually exclusive.

If you upgrade your tanks to meet the standards, it does not change your liability, it does not change your premium at this time. That has been a real concern for our dealers. Even if you go to great expense to replace your tanks, it still does not help you.

The small dealers also feel that having to post the excessively high bonds, or purchase insurance puts them at a competitive disadvantage to the large chain companies, which can in effect self-insure. In many of the stations we have in North Dakota, the self-insurance aspect actually would pay for an employee at a convenience store for a large chain. So you have to make up the amount

of an employee over and above the cost of the insurance. The longer competitor is greatly advantaged.

We have a petroleum cleanup fund in North Dakota. It is inadequate at this time. It is Limited to \$100,000. It was set up to help pick up the first \$100,000 of any spill, cleanup costs only, not third-party liability. The fund provided for \$7,500 deductible plus 90% State 10% owner cost share up to the \$100,000 limit. It has not varied the insurance costs one iota in our state. It just hasn't worked out.

So we do need the extension of time to readdress that Fund in our legislature. Our Legislature does not meet until Jan. 1991.

We therefore would ask you to delay the implementation of the EPA regulations for one year. We support the reduction of the \$1 million mandatory coverage to at least \$500,000 and less, if possible.

We recommend that EPA study and recommend methods to eliminate the need for insuring third-party liability, and the catastrophic results which will occur from such liability.

That area has proven, I think, to be the most difficult for the insurance companies that we have talked to in North Dakota. They just don't know what that risk will be and they are afraid to take on those kinds of risk liabilities.

We ask that the EPA examine the financial burden of complying with the technical standards and suggest ways to relieve the financial burden. The EPA, while issuing rules and asking companies to do certain things, has not been willing, we think, to understand that compliance does have a cost, and in fact does put smaller petroleum distributors at a disadvantage to large distributors who can selfinsure. We ask that you evaluate the necessity for carrying the mandatory high pollution control liability insurance once a new protected underground tank system has been implemented.

I thank you very much.

Senator BAUCUS. Thank you very much, James.

Okay, Dick, you are the wrap-up here. All the insurance questions have been raised here.

STATEMENT OF DICK KOSCIELAK, SENIOR VICE PRESIDENT, AGRICULTURAL EXCESS & SURPLUS INSURANCE CO., CINCINNATI, OH

Mr. KOSCIELAK. Senator, I appreciate your sticking around, considering that I am not from Montana. I have driven through the State, however, it is a very colorful state.

Senator BAUCUS. Come back again and stay. We are trying to get enough people in the State so we have two congressional seats.

Mr. KOSCIELAK. Maybe when I retire. In the meantime, I guess I have heard a lot of commentary about the insurance industry. Unfortunately, I am the only representative of the industry here speaking, but I would like to clear up several points, or try to get through several points. I have submitted a written statement that speaks to the heart of several of the issues here.

Senators Durenberger and Chafee I think correctly stated that one of the major problems here is the overall cost. Someone has to pay the cost. It would appear that there are probably three possible

methods of paying this cost. One is that the State or Federal Government will raise a tax or a fee of some sort which will pass on the cost to the public by way of a tax. The second would be that the insurance companies will pick up the cost, at a charge that is adequate to make a profit. As Senator Simpson pointed out, we are not a charitable organization. That would be passed on in the way of higher operating costs to the dealers.

Lastly, the dealers themselves could pick up the costs, which would in fact also raise the cost of doing business. It appears that the public is going to pay for this cost one way or the other.

Another probability is that the longer we wait to implement the whole program, the higher the cost is going to be and someone is going to have to pay the cost at some point. It is just a question of who is going to pay it, when, how, is it fair. I think there is a possible solution we found through our investigation and talking to various states. I would like to point out we have in particular been talking to the states of Oregon, Washington, North Dakota and Wisconsin. Based on the previous speaker, I think there are some misconceptions in the state of North Dakota.

For example, we are prepared to offer a very low cost program in the state of North Dakota to fully complement the North Dakota state fund to bring it up to EPA standards if the North Dakota state fund and the North Dakota legislature will guarantee its solvency, or if the Federal Government will guarantee its solvency. We are prepared to offer premiums on average less than \$600 per tank. All this talk about the high cost I think is just a red herring that doesn't really speak to the main issues here.

I think on the question of fairness, the state fund mechanism is probably the fairest method of funding the initial costs. I would like to point out that in high frequency situations such as exist here, the insurance company is not a good mechanism for funding this since it is extremely difficult for us to pick up the cost of a burning building.

The excess costs bases, though, say something in excess of \$100,000 per loss, or in the case of Wisconsin, \$200,000 per loss, does allow us to get into an area of expertise that we are much better at, and that is the spread of risk.

Also, to get the insurance industry involved in this mechanism, we believe will help out in two other fashions. One is that claims will be cleaned up quicker, because it will be in our best interests to keep the cost of the claims down. We can come in, handle the claims, clean up for the state fund, and get this accomplished quicker than it is being accomplished right now. Under the current system, state funds only reimburse the person who has the problem. The person has to put up a lot of money, and possibly be put out of business in the cleanup, before they are able to go back and get the money.

In the case of the State of Florida, which is a fine state fund, it takes at least six months to get your money. You have to go to your bank, which may not loan you the money, and you are out of business in the meantime. With the insurance mechanism in place there, we propose, as in the State of Wisconsin, that we would front the money, then go back to the state to get a reimbursement. This

would allow the cleanup to be started in a quicker fashion than it is currently handled under most of the proposals.

Unfortunately, several state funds are unwilling to work with any insurance companies or to cooperate in any fashion. Several states are willing to cooperate, and we look forward to cooperating with them.

Another area—because we specialize in insurance and claims handling, we can handle the claims cheaper than the state can handle them. I think that is an important issue.

A few other points I would like to make that I think are very important is that there is a defense cost involved in many of these cases. I do not know of any State funds that currently propose to cover defense costs. Our policy does. We would work in conjunction with states to cover defense costs. We are also fairly expert in that area.

Finally, the state funds in general are so badly underfunded that their chances of survival in most cases are virtually nil. So it is well and good to say what the state fund is going to be there, but if you are looking for financial responsibility, the state funds are not there yet. Something must be done to shore up their finances or it is just an illusion that the coverage is there.

Currently they are funding less than \$2 billion a year in the various state funds, and it obvious from the number stated earlier that something at least in excess of \$7 billion or more is needed. The money will have to come from somewhere.

We propose that working with a state like Oregon also offers another solution—we are willing to guarantee to a bank what the cost of insurance will be after the cleanup is in place, and we will guarantee the insurance while they are in the process of getting the cleanup fund.

We think the State of Oregon has one of the better programs going, and we look forward to working with them. We are one of the approved carriers in Oregon. I think also our expected premium was a little misstated. We are willing to guarantee a premium after cleanup of a maximum of \$500 per tank. We don't think that is excessive, however, for those who can't afford that, then I guess it is excessive.

Senator BAUCUS. Thank you very much, sir.

What's the difference in premiums if the liability limit is lowered from \$1 million to \$500,000, as a general rule?

Mr. KOSCIELAK. As a general rule, it will lower the premium less than 10 percent.

Senator BAUCUS. Less than 10 percent?

Mr. KOSCIELAK. Less than 10 percent. Most of the cleanup costs are within the first \$150,000. Our expected costs are about \$135,000 per cleanup, including defense and third-party liability. Obviously, there are cases that go well beyond the \$1 million level, and well above the \$500,000 level.

I don't know what is affordable, but I think probably for the good of having the ability to pick up the big losses, the actual costs for the higher limits is really not that high. For example, I would expect that the cost to carry a limit from \$500,000 to \$1 million is under \$100.

Senator BAUCUS. Mr. Taggart, you commented on the State plans generally. What about the adequacy? You said some of the State plans were adequate and some were inadequate? What about the Montana plan, in your judgment?

Mr. TAGGART. Senator, we have a very real worry that our fund may be available to the refiners. If it is, then the fund could be depleted quickly. In fact, one of the first three applicants is a refiner.

Senator BAUCUS. If it were not available to refiners, then what?

Mr. TAGGART. We would have better adequacy. We would feel better about being able to buy a little time to build up the fund.

Senator BAUCUS. By and large, it is sufficient? Do you have any major problems with the Montana plan if refiners are not a part of it.

Mr. TAGGART. No. We do not have any problems with the plan, but we do need more time to build up the money in the fund.

Mr. KOSCIELAK. May I offer an opinion? The fund is inadequate.

Senator BAUCUS. Why do you say the fund is inadequate?

Mr. KOSCIELAK. The amount of cleanup that is going to be required in Montana, if it is done in any kind of a reasonable time frame, the money just is not going to be there to do the cleanup. Unless their funding is increased, the money will not be there for the later people, I don't care if the refiners are in or out. If the numbers that are cited here are anywhere near correct, that 10 to 30 percent of the tanks are currently leaking or are contaminated, even with the small cost of cleanup in many cases, the fund just is not there.

The Florida fund, for example, if you did the math on that, has 10,000 claims at an average expected cost of \$200,000 per claim. They are collecting \$50 million a year. Their liabilities are \$2 billion at this point, they are collecting \$50 million a year.

Montana is not anyway near the dire straits of that, but it is not adequately funded. One observation is that generally speaking, the western states and the state with deep water can have a radically lower insurance premium because the number of cleanups and the cost of cleanups is going to be radically lower. Their funding for the state fund needs to be far less than a state like Florida.

Senator BAUCUS. What about the LUST trust fund being used to either help guarantee or supplement the State funds?

Mr. KOSCIELAK. That's one of the best ideas I have heard. One of our major problems—we would step into State after state right now with their State funds, if we felt that they would be in place. The State of Wisconsin, for example, right now we are working with them on the basis that they will guarantee that the fund will not become insolvent. In that case, we are offering a premium of \$300.

Senator BAUCUS. I would like to ask the others about that suggestion. Any reactions?

Mr. DASKAL. Senator, on behalf of the service station committee, we very strongly endorse the concept that we made efforts to try to do that when the LUST trust fund was passed in 1986. The State funds generally are undercapitalized. They are right. What we have seen in some of the older states, states that have had funds for a couple of years, has been scary, quite frankly. As I say, we couldn't endorse it much more strongly.

Senator BAUCUS. How much more Federal exposure would there be? I can just hear the OMB guys downtown when they look at this and come up with all kinds of reasons why it can't be done or should not be enacted.

Mr. DASKAL. It is a concern, but I think on the other hand, you have to look at what happens if we don't. I think if we don't what is going to happen is that a lot of the people who have older tanks are just going to walk away.

Senator BAUCUS. What about a State match program of some kind? The first one is the fund, perhaps you get LUST—I think it is a good idea, frankly. Another is just the financial assistance for upgrading and cleanup, and so on. What ideas do you have for that?

Mr. ROBERTS. Senator, that proposal that I made, I meant to say over the \$500 million that is already in the funds. That is how much is there now. All I am saying is that you take that for three years out, take the 1/10th of a cent and let that just stay in gear collecting now on all gasoline that comes through the system, and let that money go through EPA regulations, let them monitor how the States—in other words, the states have certain criteria.

In my proposal I gave what those were. Basically they have to be certified by the EPA, which is what they have to be now, to be an approved trust funds. The other thing is that the state has enacted a fund itself, an actual fund, that the fund meets the specified criteria as proposed by the EPA, and the EPA certifies to the Treasury Department that the state fund is in place.

If those three criteria are met, then basically you pass it back to the states based on their volume. It is a simple formula.

Senator BAUCUS. I would like to ask Ms. Epstein about all this—these proposed remedies to help alleviate some of the financial burden on some of the smaller rural operators?

Ms. EPSTEIN. First, I want to emphasize that what we want to do is help rural operators that don't have leak problems and don't cause threats to nearby groundwater. Because the underground storage tank law was enacted to protect human health and the environment, and while we sympathize with many, many small businesses that don't have problems, those that do, it might be best that they do close, and in the long run that's the most economic solution.

One point I want to make about using the LUST fund monies is that the way the trust fund is set up now, those monies cannot be used for third-party liability. They can only be used for cleanup. So if those monies were being used to capitalize any state funds, you would have to be certain that those funds could be used for third-party liability in order to be acceptable as a form of financial assurance.

Senator BAUCUS. It is clear that there is a problem here. It is also very clear that it is a problem that has to be solved. I don't know, Ms. Epstein, if you have been to Belgrade, Montana, for example, or parts of rural America, but there are a lot of service stations in the west—and they are not members of larger companies—that need help.

It is clear that most of them, I think all of them, want to do a good job, and they want to clean up, they want to be able to re-

place their tanks if their tanks are made of bare steel, and they are starting to corrode, and so on. But suddenly, EPA and the Congress placed a very great burden on them. I think, frankly, some of the suggestions that have been raised today, for example that the LUST trust fund may be developed and some other forms of Federal guaranteed assistance of some kind to help clean up makes good sense.

The obvious question is how we are going to persuade some members of Congress to go along with the costs that are involved here, and how it compares to other things around here.

Mr. ROBERTS. I want to make one other comment.

Senator BAUCUS. Sure.

Mr. ROBERTS. Our experience in our system, and we are 54 years old—the reason I don't have any problem remembering that is because that's how old I am. But we don't have the kind of numbers that everybody is talking about here, this 30 percent. We just don't have that. If you go look at some of the records—I just asked Doug how many he has in his operation, he is an oil jobber just like we are, it's not large, but he is an oil jobber—I just don't believe we have the numbers that have been talked about.

I think we are overkilling there. I think that when the dust settles three or five years from now, I think the actuarial tables will show that that is just not the case. We may have, if you include the orphaned tanks, the tanks that have been abandoned and left with some kinds of other things in it. But I just don't believe it is that big.

Mr. KOSCIELAK. Can I make a comment on that?

Senator BAUCUS. Sure.

Mr. KOSCIELAK. It is awfully hard to tell this early on. If we knew better, there would be a lot more insurance companies in the business. But if I could make a guess right now, it would be more like 13 percent are currently contaminated. That might be a more correct number. And of that number, not all 13 percent are leaking. You had mentioned earlier to people that there is an awful lot of contamination caused from spill and overfill problems. That is a really minor problem and one that is relatively easily corrected in most cases, especially in the soil that is in most of the southwest and western states.

Thirteen percent is probably more like the contamination number—more like in that ball park. Actual leaking tanks, 30 percent is almost outrageous.

Mr. ROBERTS. Most of that is caused by transport drivers over the years, abusing and going in and dropping products and overspill.

Senator BAUCUS. If it is lower, then why aren't the premiums lower?

Mr. KOSCIELAK. Because if you had premiums that would cover the 30 percent figure, instead of—

Senator BAUCUS. But you yourself say it is not 30 percent.

Mr. KOSCIELAK. Our premiums are predicated on an inspected leak rate of about a reported leak rate per year of two per year, two per hundred. Of the ones that are out there leaking, they will not all be reported in the same year. Our expectation is that over the next six or seven years they will be reported. Our rates are

based on a two percent leak rate, not a 30 percent leak rate. You will certainly never have all 30 percent reported.

What does that mean in the way of premiums? If the premiums are still viewed as too high, I guess there would be a difference of opinion as to what is high and what is affordable. Obviously, someone's profit margin is such that their profit is \$13,000 and their insurance premium is going to be \$12,000, then the premium is high. It may be correct, but it is still high.

Mr. ROBERTS. Dick, the only problem with that is—we were just talking about our margins. We were not setting margins, understand, but we were discussing what kind of a margin we are getting on gasoline, John. And I don't know what that relates to his per gallon, but it would be horrendous per gallon. It would be almost totally everything we were able to bring to the table.

Mr. KOSCIELAK. My guess is that the number we think is in the ball park, if we wrote every tank in the country 6/10 of a percent or 7/10 of a percent per gallon within our system of underwriting and claims handling—so if that wipes them out, then it is a high number.

Senator BAUCUS. We are going to have to wrap this up very quickly.

Candy, you have been trying to get our attention?

Ms. MILLS. I would like to make one point. You can spread the costs over the total gallons sold—maybe not particularly costs of insurance. My insurance deadline has not approached; I am struggling with the technical requirements.

I sell one tenth as much gas as John does. I have to pay the same costs of upgrades. I think it is really important to get these costs spread out over the entire gallonage sold in the country. That could happen with insurance also. It could happen through trust funds. The entire program could be set up to be funded in that way. I think that's an important thing.

Senator BAUCUS. We appreciate that.

Mr. ALEXANDER. Senator, I think all of us here have said basically the same thing. We urge that you look into a low interest loan program, we urge that you look at the LUST with the state program, and as a businessman, I cannot see what harm it is going to do to delay the regulation. I have not heard one person today tell us what harm it is going to do for the EPA to sign a form and delay the regulations for six months or a year, or whatever they have to do.

Senator BAUCUS. Precisely which regulations? They have a lot of regulations?

Mr. ALEXANDER. The financial responsibility regulations.

Mr. ROBERTS. I think it has to be changed, because if you don't you are going to violate some loan covenants and some agreements and leases. I know in my case if it is not done, I am in violation of the lease.

Senator BAUCUS. Ms. Epstein, how far are you willing to delay?

Ms. EPSTEIN. I think the pressure should be kept on. That's why we think six months.

Senator BAUCUS. You said six months in your testimony.

Ms. EPSTEIN. That's right.

Senator BAUCUS. We are going to have to wrap up here. Mr. Daskal, you are the last speaker.

Mr. DASKAL. One last comment, Senator. I know that the focus today has been on tanks. But the service stations are trying to deal with a lot of other regulations at the same time. Used oil is going to be down this year, and we certainly don't know what is going to happen with clean air, the alternative fuels, vapors and so on.

I think whatever program we set up, we should start thinking now about making it more of a broad environmental compliance type fund as opposed to specifically underground tanks.

Senator BAUCUS. That's a very interesting point. This has been very helpful, and I want to thank all the witnesses for coming. Some of you have come from a greater distance than others, and I particularly thank those of you that have come from Montana.

Thank you very much. This hearing is adjourned.

[Whereupon, at 1:13 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Statements submitted for the record and the bill, S. 1560, follow:]

STATEMENT OF
THE HONORABLE CONRAD BURNS
SENATOR FROM MONTANA
ON THE
UNDERGROUND STORAGE TANK PROGRAM
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION
ENVIRONMENT AND PUBLIC WORKS COMMITTEE
UNITED STATES SENATE
FEBRUARY 20, 1990

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE: I APPRECIATE THE OPPORTUNITY TO COME BEFORE YOU TODAY AND DISCUSS THE UNDERGROUND STORAGE TANK PROGRAM. AS YOU KNOW I AM A COSPONSOR OF SENATE BILL 1560, THAT WOULD SUSPEND ENFORCEMENT OF EPA'S REGULATIONS RELATING TO UNDERGROUND STORAGE TANKS.

BACK IN 1986 CONGRESS ATTEMPTED TO STRENGTHEN THE EPA'S LICENSE TO REGULATE BOTH THE TREATMENT OF OLD TANKS AND THE LIABILITY ASSOCIATED WITH NEW TANKS. CONGRESS BELIEVED THAT IT WAS GETTING TOUGH WITH THOSE WHO WOULD CONTAMINATE OUR GROUNDWATER BY LEAKING UNDERGROUND STORAGE TANKS.

MR. CHAIRMAN, THE CONGRESS HAD THE RIGHT ENDS BUT THE EPA IS USING INCORRECT MEANS TO CARRY OUT THIS MANDATE.

EPA'S REGULATIONS WOULD FORCE TANK OWNERS TO DEMONSTRATE FINANCIAL RESPONSIBILITY FOR A MINIMUM OF \$1 MILLION TO COVER THE COSTS OF CLEANUP AND THIRD PARTY LIABILITY ARISING OUT OF RELEASES.

THE MAJOR OIL COMPANIES CAN EASILY ABSORB THE COST OF COMPLIANCE. ALL THEY HAVE TO DO IS RAISE THE PRICE OF GAS A

FRACTION OF A CENT PER GALLON, SPREAD IT OVER THOUSANDS OF STATIONS, AND THE PUBLIC WOULD BEAR THE PRICE FOR INCREASED TANK SAFETY.

WHILE THE REGULATIONS SEEM TO REFLECT CONGRESS' INTENT TO CLEAN UP EXISTING GROUNDWATER PROBLEMS, THEY DO NOT TAKE INTO ACCOUNT A PATTERN IN THE RETAIL GASOLINE INDUSTRY OR ITS ROLE IN RURAL AMERICA. FOR EXAMPLE, THE MAJORITY OF GAS STATION OWNERS IN MONTANA DO NOT OWN A VAST NUMBER OF STATIONS. THEY OWN JUST A FEW STATIONS. THEY CANNOT SPREAD THE COSTS OF INCREASED LIABILITY OR TANK REPLACEMENT AROUND EASILY. PROJECTIONS FOR MONTANA, WHICH HAS 18,000 UNDERGROUND TANKS, SHOW THAT 40 PERCENT OF THE GAS STATIONS WITH TOWN POPULATIONS OF LESS THAN 10,000 WILL CLOSE. 61 PERCENT OF THE GAS STATIONS WITH POPULATIONS BETWEEN 10,000 AND 50,000 WILL CLOSE. THAT MEANS THE CLOSEST PLACE TO GET GAS IN PARTS OF RURAL MONTANA WILL BE 40 TO 50 MILES. AS DISCUSSED PREVIOUSLY, BECAUSE LARGER ENTITIES ARE BETTER ABLE TO MEET THESE REGULATIONS, AND AT A LOWER COST, THERE ARE CLEAR ANTICOMPETITIVE IMPLICATIONS. CONSUMERS WILL FACE

DECREASED COMPETITION AS WELL AS DECREASED CHOICE RESULTING IN HIGHER GAS PRICES AND GREATLY INCREASED INCONVENIENCE THROUGH LARGE-SCALE STATION CLOSURES.

ALSO HARD HIT WOULD BE THE SMALLER LOCAL GOVERNMENTS. 85 PERCENT OF THE 39,000 LOCAL GOVERNMENTS HAVE POPULATIONS OF LESS THAN 10,000. WITH THE LIMITED TAX BASE IN THESE SMALLER COMMUNITIES THE LOCALITIES WILL HAVE DIFFICULTY RAISING THE REVENUE TO COMPLY WITH THE EPA REGULATIONS.

MR. CHAIRMAN, NO GAS STATION OWNER WANTS TO POLLUTE THE GROUNDWATER. AFTER ALL, THAT OWNER MUST RAISE A FAMILY AND DRINK THE SAME WATER AS THE REST OF THE COMMUNITY. THE TANK OWNERS SHOULD BE HELD RESPONSIBLE FOR LEAKS. HOWEVER, WE SHOULD RECOGNIZE THAT IT IS IN NO ONE'S INTEREST TO DRIVE THESE TANK OWNERS FROM BUSINESS BY EXCESSIVE REGULATION. THERE IS A REAL POSSIBILITY THAT OWNERS UNABLE TO AFFORD THE COST OF LIABILITY INSURANCE MAY TOSS THE KEYS TO THE EPA AND WALK AWAY FROM THEIR PROBLEMS LEAVING OUR COMMUNITIES WITH A DOUBLE BURDEN--A WATER QUALITY PROBLEM AND A GASOLINE DISTRIBUTION PROBLEM.

RURAL GAS STATIONS ARE KEY LINKS IN MONTANA'S TRANSPORTATION INFRASTRUCTURE. IN ORDER TO PRESERVE THAT INFRASTRUCTURE, AND THE VIABILITY OF LIFE IN RURAL AREAS, EPA'S REGULATIONS MUST BE MODIFIED. S. 1560 WOULD DO JUST THAT. S. 1560 WOULD SUSPEND ENFORCEMENT OF THE STAGGERED COMPLIANCE DATES IN THE FINANCIAL RESPONSIBILITY REGULATION FOR CATEGORIES II, III, AND IV, WHO ARE OWNERS OF 1 TO 999 UNDERGROUND STORAGE TANKS, FOR ONE YEAR FOLLOWING THE DATE OF ENACTMENT. AFTER THE EXPIRATION OF SUCH 12 MONTH PERIOD, THE ADMINISTRATOR OF THE EPA MAY ENFORCE SUCH REGULATIONS IF HE DETERMINES THAT THE ENFORCEMENT OF SUCH REGULATIONS WOULD NOT IMPOSE AN UNJUSTIFIED ECONOMIC BURDEN ON THE TANK OWNER.

THE \$1 MILLION FINANCIAL RESPONSIBILITY BASICALLY MEANS POLLUTION LIABILITY INSURANCE. THE EXISTING LAW GIVES EPA THE AUTHORITY TO SUSPEND ENFORCEMENT OF THESE REGULATIONS IN SIX-MONTHS INCREMENTS. EPA HAS NOT EXERCISED THIS AUTHORITY AND HAS GIVEN NO INDICATION THAT IT PLANS TO HELP ANY OF THE TWO MILLION TANKS OWNERS NATIONWIDE.

POLLUTION LIABILITY HAS BEEN DIFFICULT TO FIND. INSURANCE COMPANIES WITH PROVEN TRACK RECORD IN TERMS OF CAPITALIZATION AND REINSURANCE CAPABILITIES ARE IN SHORT SUPPLY. ACCORDING TO AN EPA LIST DATED OCTOBER 4, 1989, THERE WERE APPROXIMATELY 18 COMPANIES WRITING POLLUTION LIABILITY COVERAGE FOR PETROLEUM UNDERGROUND STORAGE TANKS. SINCE THEN, PETROMARK ANNOUNCED ON FEBRUARY 8, 1990, THAT IT COULD NOT CONTINUE TO ISSUE NEW AND RENEWAL COVERAGE AFTER FEBRUARY 7, 1990, PENDING A SECOND REVIEW OF ITS FINANCIAL SITUATION BY AN ACTUARIAL FIRM. ANOTHER COMPANY FEDERATED MUTUAL INSURANCE COMPANY RECENTLY ANNOUNCED THAT IT INTENDED TO WITHDRAW FROM STATES THAT HAVE ENACTED STATE TRUST FUNDS. THESE TWO FIRMS INSURE 88 PERCENT OF ALL TANK OWNERS. ALSO THE ENVIRONMENTAL PROTECTION INSURANCE COMPANY HAS COMPLETELY WITHDRAWN FROM THE POLLUTION LIABILITY INSURANCE MARKET FURTHER RESTRICTING POSSIBLE INSURANCE VENDORS.

OF THE 15 COMPANIES REMAINING, ONLY ONE, OILMEN'S INSURANCE, HAS AN ESTABLISHED HISTORY IN THE UNDERGROUND STORAGE TANK POLLUTION LIABILITY AREA. HOWEVER, THIS COMPANY DOES NOT YET

PROVIDE A POLICY THAT MEET EPA'S REQUIREMENTS. THE REST ARE NEW TO THE FIELD AND HAVE NOT YET DEMONSTRATED THEIR UNDERWRITING CAPACITY, RESPONSIVENESS TO CLAIMS, OR A DETERMINATION WHETHER THEY ARE ADEQUATELY CAPITALIZED. COMPOUND THE LACK OF VENDORS WITH AN EVEN GREATER PROBLEM IN THE DIFFICULTY TANK OWNERS ARE HAVING OBTAINING REASONABLY PRICED POLLUTION LIABILITY COVERAGE AND ONE CAN SEE THE ODDS ARE AGAINST THE TANK OWNERS GETTING LIABILITY INSURANCE. INCREASE IN LIABILITY PREMIUMS OF 250-300 PERCENT ARE NOT UNCOMMON. AS ONE GAS STATION OWNER DESCRIBED IT, "THE FEDERAL GOVERNMENT IS REQUIRING ME TO PURCHASE SOMETHING WHICH IS GENERALLY UNAVAILABLE, AND WHEN IT IS AVAILABLE, IS SO EXPENSIVE I CANNOT AFFORD IT." THAT STATEMENT IS ONE THAT WILL BE ECHOED 26,500 TIMES BY GAS STATION OWNERS NATIONWIDE THAT WILL BE FORCED TO CLOSE THIS YEAR IF THE REGULATIONS ARE NOT DELAYED. I THINK IT WOULD BE MORE ENVIRONMENTALLY SOUND TO SPEND MONEY REPLACING THE TANKS, RATHER THAN ON COSTLY INSURANCE PREMIUMS.

IN MONTANA NEARLY HALF OF ALL GAS STATION OWNERS HAVE NO INSURANCE COVERAGE AT ALL. EVEN IF MY STATE'S FUND GETS

APPROVED, THE PREMIUMS WILL STILL BE IN THE NEIGHBORHOOD OF \$17,000. IF YOU USE MR. AND MRS. ORMAND B. EASTMAN, OWNERS OF A GROCERY STORE IN PROCTOR, MONTANA, WHO GROSSED \$75,000 IN EARNINGS IN 1988 INCLUDING GAS AND GROCERIES AS AN EXAMPLE, THEIR LIABILITY PREMIUM WOULD TAKE 24 PERCENT OF THEIR TOTAL SALES. THAT IS TOO HIGH AN ECONOMIC BURDEN FOR THE SMALLER STATIONS OWNERS TO COMPETE WITH THE MEGA OIL COMPANIES WHO CAN AFFORD TO SELF INSURE THEIR TANKS.

APPROXIMATELY 37 STATES HAVE ENACTED TRUST FUNDS, ONLY FIVE HAVE BEEN APPROVED BY THE EPA--ALABAMA, GEORGIA, IOWA, LOUISIANA AND MISSISSIPPI. THE VAST MAJORITY REMAIN UNAPPROVED BY EPA, PREVENTING THEIR USE BY TANK OWNERS AS A MECHANISM TO DEMONSTRATE FINANCIAL RESPONSIBILITY. AS THE APRIL 26 DEADLINE FOR 13 TO 99 TANKS, WHICH IS HALF OF ALL MARKETERS, APPROACHES THERE IS A PANIC AMONG OWNERS. A PANIC THAT THE GOVERNMENT WILL FORCE THEM TO SHUT DOWN.

THE EPA HAS SUGGESTED THAT THESE REGULATIONS SAVE THE GROUNDWATER FROM POTENTIAL CONTAMINATION. HOWEVER, THE FEDERAL

LAW DOES NOT PREVENT ONE DROP OF GAS FROM LEAKING INTO THE GROUNDWATER. IF THE EPA CARES ABOUT THE GROUNDWATER IT WOULD APPROVE THE 37 STATE FUNDS IMMEDIATELY OR SUSPEND THE ENFORCEMENT DATE. THE EPA IS USING THE REGULATION PROCESS AS A CLOSED FIST WHEN IT SHOULD HAVE AN EXTENDED HAND TO THE TANK OWNERS TO HELP COME UP WITH WAY TO GET NEWER, CLEANER TANKS IN THE GROUND SOONER. WITH BETTER QUALITY TANKS IN THE GROUND, VENDORS WILL INCREASE, INSURANCE WILL BE CHEAPER, AND THUS PROVIDE AN INCENTIVE TO OWNERS TO COMPLY WITH THE ENVIRONMENTAL PORTION OF THE REGULATIONS BY UPGRADING THEIR TANKS. THE CURRENT REGULATIONS TAKES MONEY AWAY, KEEPING THE TANK OWNERS FROM UPGRADING AND REPLACING TANKS--LEAVING THE GROUNDWATER AT RISK AND SMALL BUSINESSES ON THE VERGE OF BANKRUPTCY.

IT IS MY HOPE THAT THIS COMMITTEE HEARING WILL SEND A CLEAR MESSAGE TO THE TANK OWNERS, THAT CONGRESS IS TRYING TO HELP THE LITTLE GUY. I BELIEVE THE CONGRESS SHOULD DELAY THE IMPLEMENTATION FOR ONE YEAR, LET THE EPA EXAMINE ALL THE OPTIONS AND THEN FINE TUNE THE REGULATIONS TO ALLOW IMPLEMENTATION OF A

SOUND ENVIRONMENTAL AND SOUND ECONOMIC POLICY THAT WILL ALLOW THE
SMALL BUSINESSES TO STAY IN BUSINESS.

THANK YOU, MR. CHAIRMAN.

Testimony by Senator Claiborne Pell (D-RI)

Prepared for a February 20, 1990

Hearing of the Senate Environment and Public Works Committee's
Subcommittee on Environmental Protection

Mr. Chairman, I am very pleased to have this opportunity to share my observations about the Underground Storage Tank (UST) program and the Leaking Underground Storage Tank (LUST) program with you and the members of your committee, including my good friend, Senator John Chafee of Rhode Island.

My observations are based on a crisis that occurred in the neighboring communities of Westerly, Rhode Island, and Pawcatuck, Connecticut, over the past weekend when a leaking underground storage tank threatened to contaminate the area's water supply.

This crisis, which has generated front page stories in Rhode Island newspapers for the past four days, demonstrated clearly that an effective Underground Storage Tank Program is essential to protecting the public's health.

The story that developed was that a gasoline storage tank at a service station in Pawcatuck, Connecticut, leaked about 1,500 gallons overnight.

The gasoline was delivered during the evening of February 14th and, when the tank level was checked on February 15th, it was discovered that the gasoline had leaked out.

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The service station is directly above an aquifer that supplies drinking water to the Westerly-Pawcatuck area and is about 1/4 mile as the crow flies from the well field in Westerly that provides most of the city's water.

This leak, therefore, constituted a crisis for the 31,000 people of the Westerly-Pawcatuck area who depend on Westerly's water system for their water.

I learned of the crisis on February 16th and, after conducting a previously scheduled Rhode Island hearing of the Senate Education Subcommittee, arranged to visit both the site of the leak at the service station and the Westerly water department office at the well field.

During the course of these visits, I had the opportunity to speak with Governor Edward DiPrete of Rhode Island, Governor William O'Neill of Connecticut, EPA Regional Administrator Julie Belaga, Rhode Island Department of Environmental Management Director Robert Bendick, and Westerly Town Manager Timothy King.

I also talked with a number of other officials from the Rhode Island Department of Environmental Management, Connecticut Department of Environmental Protection, and Westerly Public Works Department.

This hearing is a timely opportunity to share my observations based on this experience and to urge you to strengthen the UST program.

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Quite simply, I have seen that, indeed, a stitch in time saves nine, and a few ounces of prevention are worth tons and tons of cure.

At this time, I am also glad to say that the water system of Westerly has not been contaminated and that clean-up measures are underway that will reduce the likelihood of such contamination.

From what I saw, the response to the situation by all levels of government was fast, efficient, and appropriate. Let us hope this intervention will prove effective as well. To those who worked so hard to address the crisis, I extend my heart-felt appreciation.

Clean up is expensive. When I was in the Westerly-Pawcatuck area, I saw an emergency public works response of significant proportions. At the service station site, the leaking gas tanks had been dug up. Monitoring wells were being installed. Air strippers and carbon filters were being brought in to clean contaminated ground water, and contaminated soil was being removed and trucked away.

At the well field site, wells were being monitored. Public water consumption was being watched, and water conservation kits were being distributed.

Elsewhere in Westerly, back-up and emergency water supplies were being brought on line.

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Schools were closed. Businesses which use water were disrupted, and household water use practices were altered.

Private property was entered to conduct testing and private property is now being taken through eminent domain to provide for the distribution of back-up water supplies.

The clean up-process, I have been advised, may take a year or even more.

I do not know whether any one has yet measured the full cost of the crisis created by this gasoline leak from an underground storage tank, but I am sure it is many thousand times greater than the cost of replacing the tank and avoiding the leak.

Enforcement is critical. Why was a dangerous storage tank (i.e., an older tank of single steel wall construction) allowed to remain in the ground? The owner of the service station contends that an extension for meeting Connecticut's deadline for tank removal was granted to him.

Connecticut officials do not agree. Those officials, however, do note that they have 50,000 to 60,000 tanks under their jurisdiction. Rhode Island officials say there are more than 6,000 tanks under their jurisdiction in Rhode Island, which has a total land area of about 1,000 square miles.

If it is impossible, as a practical matter, to initiate enforcement actions to bring all tanks into compliance, then a system of priorities is clearly needed. Underground storage

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tanks located above aquifers supplying drinking water, clearly, should be at the top of the list.

Allowing old tanks to remain in service on a hillside less than a quarter mile from a well field providing drinking water to 31,000 people is an unsound, unacceptable practice.

If, as a practical matter, all old tanks cannot be replaced right away, then it is important that procedures be adopted to reduce the likelihood of damage to the tanks.

In this case, which I examined, it appeared that the hole in the tank developed where the measuring stick used to check the level of gas in the tank tapped against the bottom of the tank when measurements were being taken.

If such an apparently simple procedure in fact may cause damage to underground storage tanks, it must either be outlawed or the use of non-damaging measure sticks must be compelled.

Contingency plans are vital. The people of the Westerly-Pawcatuck area are fortunate. The Westerly water system had sources of supply at other places, which escaped the threat of contamination that shut down the well field.

With conservation measures, these supplies seem sufficient for the time being, to meet essential water needs. There are also additional water resources which can be tapped fairly expeditiously.

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Furthermore, rainfall has been adequate, and the water supply has not been diminished by the drought conditions that have occurred in the past.

Such good fortune cannot be presumed, however. I believe that communities should assess their vulnerability to leaking underground storage tanks.

If there are storage tanks whose failure would cause a crisis, contingency plans should be prepared. The process of assessing vulnerability would also serve as a means of identifying those storage tanks which should be given priority attention for enforcement.

Contingency plans might logically include:

- Identification of potential sources of leaks.
- Identification of the availability of the excavating and monitoring equipment needed in the event of a crisis.
- Identification of potential alternative water supplies, and
- Identification of the source of water conservation kits. A key component in any program to address sharply reduced water supply is the ability to institute broad-based conservation measures that effectively reduce unnecessary water consumption.

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Intergovernmental cooperation is essential. When I visited the Westerly-Pawcatuck area I saw all three levels of government--federal, state and local--working together. Their cooperation was genuinely impressive.

The fact is that many local governments do not have technical expertise to respond effectively to a leaking underground storage tank crisis, and it would not be cost effective for them to retain such expertise "just in case."

When an underground storage tank leaks, hydrogeologists are needed to ascertain which direction the plume may travel, where monitor the movement of the plume, and which remedial measures may prove most effective. Specialists are needed to take and test samples and analyze the results.

The team work I saw in Westerly impressed me as "All Star" quality. It seemed truly professional at every level.

The unfortunate truth is that EPA and State officials are gaining considerable practical experience dealing with leaking underground storage tanks.

A given set of local officials may, through good fortune, have avoided gaining such knowledge first hand--and we must never take for granted that good team work will occur without design in every crisis.

Knowing that team work is likely to be essential, there is an obligation I believe to plan it in advance. To those who have made sound team work plans already, I say "Bravo!"

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To those who have not yet made such plans, I urge them to do so now, before a crisis occurs that threatens their water supplies--the very life's blood of their communities.

Continued Federal support of "LUST" is needed. One year before the Federal government acted, Rhode Island established its own Leaking Underground Storage Tank (LUST) program. While I am proud of my State's initiative, I am only more deeply impressed through my recent experience by the need for strong, consistent Federal support of "LUST."

The recent crisis in Rhode Island was interstate: the leak occurred in Connecticut, the well field supplying the community was in Rhode Island, and Connecticut residents in Pawcatuck rely on Westerly, Rhode Island, for their water.

Pollution does not respect political boundary lines and, in fact, rivers and other vulnerable water supplies often are the boundary between States.

During this crisis, I saw Connecticut officials working in Connecticut and Rhode Island officials working in Rhode Island in a coordinated, consistent manner.

Widely disparate environmental programs between States would not foster such critically important consistency. The Federal "LUST" program does.

EPA's cooperative agreements with each State might, in my view, be used to spell out:

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- How enforcement actions would be prioritized, so that the most vulnerable resources are protected first.
- What interim practices should be required to reduce the probability of leaks before compliance or enforcement actions are undertaken (measuring sticks that poke holes in the bottoms of tanks should be prohibited).
- What guidance or technical assistance will be provided to public water suppliers to develop "LUST" contingency plans.
- What measures are established to design "team work" into the emergency response system.

EPA's ability to attract State enthusiasm for its "LUST" cooperative agreement program depends largely on the financial capacity of the program. A fully funded program will be more appealing and more valuable than an underfunded one.

Finally, on the subject of insurance, as I have already observed: several ounces of prevention are surely worth tons and tons of cure.

Insurance is a protection for businesses as well as a cost. For those with underground storage tanks, protecting the public should be part of the cost of doing business. Insurance requirements should be fair and consistent and not vary dramatically from State to State.

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Furthermore, it stands to reason that insuring a dangerous situation should cost, in the long run, considerably more than insuring a safe one. Thus insurance costs could serve to build safety into the system.

Thank you for this opportunity to share my observations. I have attached recent clippings about this incident for your information.

STATEMENT OF
DON R. CLAY
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION
OF THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE

FEBRUARY 20, 1990

Good morning, Mr. Chairman, members of the Committee. I appreciate the opportunity to meet with you to discuss EPA's Underground Storage Tank Program, and the requirements for financial responsibility. With me today is Ron Brand, Director of the Office of Underground Storage Tanks.

As you may be aware, the Underground Storage Tank Program is one of EPA's newest programs, and in its design and implementation the agency is forging an effective partnership with the states.

We think of the program as EPA's experiment in Environmental Federalism. From the outset we have recognized that with approximately two million tanks and 750,000 facilities this program had to be implemented at the state and local level, and not through a massive build up of new staff in EPA. Therefore, we designed and are implementing a program which calls on EPA to act as a franchiser and the states and local agencies to be viewed as franchisees. This means all of our efforts are directed to supplementing and improving capabilities in those state and local agencies. It also ensures that Federal and state dollars are directed most effectively to prevention and cleanup, rather than devoted to administrative overhead.

Achievements

I also appreciate the opportunity to share with you some of our accomplishments in the implementation of the tank program:

In October of 1988 we published final regulations that--

- insure the use of sound, protective tank technology and management practices,

- require contamination from tanks to be cleaned up,

- require owners and operators to acquire the financial means to clean up contamination from their tanks, as mandated by the law, and

- establish practical and reasonable standards for the states to meet in carrying out the program.

In December of 1986 we began to carry out the provisions of the new Superfund law which created a federal Trust Fund to address the problem of leaking tanks, and in record time had established cooperative agreements with 44 states. Today we have agreements with 48 states and 6 territories and the accomplishments to date under the Trust Fund are significant: The states have conducted 40,000 site investigations, initiated 25,000 clean ups, completed 8,000 clean ups, and taken 15,000 enforcement actions. In all, the states have spent about \$45 million so far.

On the pollution prevention side of the program, all 50 states have basic legislation needed to carry out the program. This year we expect to receive applications from 14 states seeking formal approval of their programs. In the meantime, we have formal

agreements with 46 states to operate the program as implementing agency during the transition to fully approved state programs. Thus the program is being carried out actively by the states--and these efforts include active enforcement of technical requirements, outreach on upcoming regulatory deadlines, inspection of facilities, and oversight of corrective action.

Twelve states and all ten of our Regional Offices have participated in a trial run of the state program approval process--an exercise we went through to identify how we can speed up this process. Two states, New Mexico and Mississippi, have formally applied for state program approval. The Mississippi application will soon undergo public notice and comment. Our staff in EPA is highly competent and motivated. We have received the enthusiastic support of the states. It's an exciting program, and this committee shares in the success we have enjoyed so far.

Financial Responsibility Concerns

As you know, the agency was directed to address the problem of Underground Storage Tanks in November of 1984, when Congress passed the Hazardous and Solid Waste Amendments to RCRA. The financial responsibility requirements were added to the program, along with the provisions for the leaking Underground Storage Tank Trust Fund, when Superfund was reauthorized in 1986. The direction Congress gave the agency concerning these financial responsibility requirements is very specific, and I would like to provide a brief summary of the financial responsibility requirements in the law.

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For tanks at facilities involved with refining, production, or marketing activities, the law stipulates a minimum coverage of one million dollars. This level of assurance is to cover the cost of corrective action--that is, clean up--and compensating third parties for bodily injury and property damage.

Anticipating that the regulated community might have difficulty meeting these requirements, the law also grants the Administrator the authority to suspend the enforcement of these regulations for classes of tank owners, provided that certain strict conditions are met. I will return to these conditions in a minute.

EPA's regulations implementing this law were promulgated in October, 1988 and they went into effect in January, 1989. They provide for maximum flexibility on the part of tank owners in meeting the requirements of the law:

- o They allow tank owners to choose from a variety of assurance mechanisms (insurance policies, state trust funds, letters of credit, corporate guarantees, surety bonds, and so on).
- o They allow time for the regulated community, the states, and the insurance markets to respond by spreading out the compliance deadlines over a two year period. The smallest businesses and municipal governments have until October 1990 to comply.

The financial responsibility requirements have caused us a great deal of concern, which is shared by members of the regulated industry and members of Congress. The concerns revolve around the cost and availability of pollution liability insurance, and the potential impacts of these requirements on small businesses--

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especially those in rural communities. Because of these concerns, we have consistently tailored our regulations to be as flexible as possible in order to minimize any unnecessary burdens and impacts. I would like to share with the committee some of my thoughts about these concerns, and perhaps how they may be addressed.

The law that was passed in 1984 acknowledged that they have problems with the existing population of Underground Storage Tanks. That law requires owners to clean up leaks from their tanks. The amendments that were passed in 1986 require that owners have the financial means for doing so.

EPA has discretionary authority under the current law to suspend enforcement of the financial responsibility regulations for up to 180 days for certain classes of owners. However, in order for the Administrator to make this decision, he must find that:

- o Methods of financial assurance are generally unavailable to that class; and,
- o the class is in the process of developing a risk retention group, or
- o their state is in the process of developing a State fund.

We seriously considered this option for the October 26, 1989 compliance group (petroleum marketers owning between 100 and 999 tanks).

But given the statutory requirements, and the data available to EPA at the time (which indicated that about half of the compliance group had obtained coverage and that coverage was probably available to many of those not currently covered), we do

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not believe that the Administrator could have made the necessary findings. In addition, we were concerned that a suspension could create a competitive disadvantage for those firms which went to great lengths to take timely action to meet their legal and environmental obligations relative to firms which did not seek or obtain the required coverage.

It is important to note that, while EPA did not suspend enforcement for the entire group in October, we did indicate that we would entertain petitions for suspending enforcement from specific groups or geographic regions of the country that were significantly affected by the law. To the best of my knowledge, we have received only one petition.

We realize that the next two compliance groups -- composed of smaller oil jobbers and distributors (April 26, 1990) and the smallest petroleum marketers (October 26, 1990) -- may have more difficulty obtaining insurance coverage. We are deeply concerned that these two groups represent many small operations and "mom-and-pop" businesses that represent the fundamental core of our rural economy. We will take a serious look at the problems facing these groups as the compliance deadlines approach to see whether any action (for example, suspending enforcement, etc.) is warranted.

While we understand the reasons behind some of these proposed actions, we are uncertain that they fully address the difficulties that have been identified to Congress. In addition, even if EPA

were to suspend enforcement, the action does not eliminate an owner's liability if his tank leaks; nor does it eliminate any potential citizen or state action against the owner, and it does not remove any problems with lease, supply, or credit agreements that require the owner to be in compliance with all applicable Federal or state laws or regulations. Thus, suspending enforcement is a temporary fix that does not address the main issue that I had pointed out earlier: The need for encouragement of state funds to clean up existing leaks and to replace old tanks where the owner or operator fails to do so.

Even if enforcement of the financial responsibility requirements is suspended in an attempt to minimize the impact on small businesses, we will not have addressed the key problems that confront them: How are they going to address all the existing leaks (that no insurance policy will cover), and raise the capital needed to test their tanks and to replace or upgrade them?

A fundamental problem stems from the fact that the law requires financial responsibility for all tanks, and many tanks are simply not insurable. They are either too old (e.g. over 20 years of age), have leaked, or are currently leaking. No insurer will insure these "Burning Buildings".

So, while the number of insurers has increased (from two in 1986 to fourteen in 1990), it may not have increased the availability of insurance to all segments of the regulated industry. This is especially true for small businesses because

they tend to have older tanks (which are more difficult or expensive to insure). In addition, many small businesses will not have sufficient revenues to cover the cost of the insurance which is available.

However, the costs of insurance are only a small part of the bigger picture. By law, tank owners are liable for cleaning up releases from their tanks. The average cost for doing so has been going up, from around \$75,000 in 1986 to over \$150,000. While insurance may cover these costs for leaks that occur after policies are issued, it will not, as I have said earlier, pay for existing leaks. It is very unlikely that most small businesses can afford these costs.

Many small businesses are hit by this double dilemma. They cannot pay for cleaning up all existing leaks, and they do not have the money to make the improvements to their tanks and sites that may make them insurable.

A viable solution to this dilemma has come from the states. Thirty-four states have developed state trust funds, and for most small businesses, these state trust funds are the only feasible means of complying with the federal financial responsibility requirements.

EPA already has approved five state funds (Alabama, Georgia, Iowa, Louisiana, and Mississippi) as acceptable mechanisms to comply with the federal financial responsibility requirements. Another eighteen have been submitted and are under review. For

purposes of enforcement, EPA deems these pending state funds as "approved."

While state trust funds may solve the problem of cleaning up leaks from underground storage tanks, they do not address the future problem that business (especially a small business) face. Tank owners must test their tanks, and replace the old, unprotected tanks with new, protected ones, activities which are not currently funded by state trust funds.

Again, the states have developed creative and workable solutions to this problem. Eleven states have developed loan programs that provide money to small businesses in their states to test and replace their tanks. EPA is encouraged by these efforts, and we are encouraging more states to be innovative. We have recently awarded a grant to the Northeast Midwest Institute to explore the issues and options involved in developing state loan programs.

Given that the states are coming up with viable solutions to some of the problems faced by small businesses, should EPA or Congress provide some relief? We are concerned that suspending enforcement of the financial requirements may reduce the incentive for states to meet the needs of their small businesses--needs that are more accurately and appropriately assessed and addressed by state decision makers than through the use of a direct federal program.

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We will continue to monitor conditions in the insurance marketplace and the progress of state programs. We are aware that Petromark (a major insurer of underground storage tanks) announced on February 8 that it may have to cease operations due to major financial uncertainties. We will consider this situation as it applies to the October 26, 1989 compliance group (especially in how we enforce against non-compliance) and what we should do about the remaining two compliance groups. I assure you that Administrator Reilly is personally concerned about the needs of small business, and wants to ensure that we make every effort to encourage state programs that are responsive and flexible in meeting local needs. Thank you for your time, and I will be happy to answer any questions that the subcommittee may have.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL
AND LEGISLATIVE AFFAIRS

MAY 1 1990

Honorable Max Baucus
Chairman, Subcommittee on
Hazardous Wastes and Toxic Substances
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter of March 22, 1990, to Don R. Clay, Assistant Administrator for Solid Waste and Emergency Response, requesting the responses of the Environmental Protection Agency (EPA) to follow-up questions to the February 22, 1990 hearing on underground storage tanks. Attached are EPA's responses to those questions.

Please let us know if we can be of further assistance on this subject.

Sincerely yours,

Christopher P. Hoff

Christopher P. Hoff
Acting Director
Legislative Analysis Division

QUESTION:

You [Mr. Clay] refer to the issue of trying to be able to obtain "affordable" insurance --just what is your definition of "affordable?"

ANSWER:

EPA recognizes that obtaining pollution liability insurance in compliance with statutory requirements may be costly for many of the small businesses that can obtain it, but we do not have any standards or regulatory definition of the word "affordable." We decided to extend the financial responsibility compliance dates for small business and local governments because they need more time to make their facilities insurable and obtain coverage. In particular, most States need additional time to develop and submit their assurance funds to EPA for review. We believe that in the future these funds will be the assurance mechanism that is most affordable and most commonly used by small business.

QUESTION:

Can EPA provide the committee with a representative list of insurance carriers and the premiums they charge small businesses and local governments to meet EPA's financial assurance requirements?

ANSWER:

Premiums are generally based on the type of tanks to be insured, the presence of leak detection equipment, the vulnerability of ground water near the facilities and other similar characteristics of the site. It is our understanding that insurance companies determine premiums for small businesses and local governments in the same way that they do for other tank owners, though fewer companies insure local governments.

Average annual premiums that we are aware of range from \$700 to \$1200 per tank. These companies also typically have minimum premiums ranging from \$2,500 to \$5,000 for a policy that can cover multiple facilities. Please see the attached list of insurance carriers.

QUESTION:

It is my understanding that many insurance companies are requiring compliance with all the EPA technical standards before they will issue a policy. This effectively compresses the 1998 deadline for corrosion and spill and overflow protection to 1990. Based on your experiences, is this the case?

ANSWER:

Insurance companies often consider facilities with the oldest, unprotected tanks uninsurable. However, many will insure tanks, that do not yet fully meet EPA's technical standards. For those tanks, insurers may require site assessments prior to writing a policy. They may also charge higher premiums that reflect the higher risks posed by such tanks.

QUESTION:

Can EPA provide the committee with its schedule for review of these State trust funds and can you provide us an analysis of the financial implications these funds will have on small business and local governments.

ANSWER:

In order for a State fund to be approved by EPA, the State must first formally submit the State fund for review. Once the fund has been submitted, the owners and operators that are covered by the fund may use it to meet all or part of the FR requirements. Instead of setting a generic schedule, the Agency reviews and works through any problems with each State on a case-by-case basis. EPA realized that reviewing these new and often complicated bills might be a lengthy process in some cases. Therefore, we wrote the financial responsibility regulations to provide tentative approval for funds under review so that participating owners and operators would be covered during the review.

When EPA promulgated the financial responsibility rules required by statute and the tank technical standards, the Agency also analyzed their economic impacts in regulatory impact analyses (RIAs). The RIA for the financial responsibility rule indicated that these requirements would generally benefit tank owners who obtained coverage because they would be shielded from the catastrophic costs of large cleanups. Because State trust funds are a comparatively inexpensive way to comply, they should provide greater-than-average economic benefits to eligible tank owners who may include many small businesses and some local governments.

EPA is close to proposing a regulation that would allow many local governments with adequate financial strength to "self-insure." This would save them the costs of coverage through other mechanisms. However, it would force them to pay directly for the damages caused by leaks from their tanks. Overall, EPA expects this rule to provide significant economic benefits to local governments, without sacrificing environmental protection.

QUESTION: How many tanks in Connecticut have adequate leak detection systems in compliance with federal requirements?

ANSWER: In 1989, Connecticut began a leak detection compliance campaign. Their requirements target tanks at a more accelerated pace than the Federal regulations require. The first compliance group, owners of tanks 20 years old or older, had to have tested or removed their tanks by September 1, 1989. Connecticut conducted a mass mailing during the summer of 1989 to determine the rate of compliance. Fifty percent of the group responded that they were in compliance and the other half were either in violation or did not respond. Connecticut has addressed those out of compliance with follow-up letters and targeted site inspections. This summer the State will be sending formal violation notices to owners still out of compliance.

QUESTION: As of today, how many tanks in Connecticut are leaking?

ANSWER: Of the 29,415 tanks in Connecticut, 941 tanks have been confirmed as leaking.

Question: Where do tanks go when they are removed from the ground?

Answer: A brief investigation of tank removal and disposal industry practices revealed the following categories in tank handling practices.

- o Most of the tanks being removed today are steel and are cut up for scrap at scrap yards;
- o In areas where scrap metal recyclers are not accepting tanks they are being stored or abandoned in pasture or vacant land;
- o A third (and much smaller) category of removed tanks end up in Subtitle D solid waste landfills. For example, sometimes fiberglass reinforced plastic tanks and steel tanks that have been lined with plastic are cleaned, crushed and sent to the local landfill;
- o A small category of removed tanks are being certified by the tank manufacturer for reinstallation, allowing the owner to take the tank with them when they change locations or are being remanufactured to meet new tank standards; and
- o Finally some tanks are being removed and reinstalled for storage of heating oil or water in states where this practice is not prohibited.

Question: What clean-up standards should owners and operators apply in an UST remedial action to protect human health and the environment?

Answer: The Federal UST regulations contain action-forcing remediation steps in contrast to numeric clean-up standards. These requirements must be imposed by implementing Agencies on a site-specific basis and, in response, States apply their own standards, some of which are numeric. The federal UST corrective action requirements under RCRA Subtitle I mandate that owners and operators report their releases, remove free product, determine the extent of contamination, and take soil and ground water remediation actions if needed to protect human health and environment at the site.

An UST corrective action must be conducted in accordance with a plan approved by the implementing agency. EPA believes that clean up standards are best determined by the implementing agency on a site-by-site basis, hence the federal regulation steps must be taken but they do not prescribe numeric goals.

For instance, Connecticut's UST standards require that a site assessment and corrective action be completed as directed by the Department of Environmental Protection. Free product must be removed at any UST release site but the state has been left the discretion by the federal requirements to focus remediation efforts on state-classified areas of useable groundwater. In already heavily polluted or saline groundwater areas, the clean-up objectives focus on preventing explosions and exposure to petroleum vapors. In pristine groundwater, the remediation goal is to prevent the further spread of contamination and to remove all of the contaminants from the groundwater.

PROVIDERS OF UNDERGROUND STORAGE TANK
POLLUTION LIABILITY INSURANCE
 as of February 12, 1990

This listing is for informational purposes only; it is not an endorsement of any of the insurers listed. EPA has not evaluated these insurers' policies to determine whether they meet the federal financial responsibility requirements. Some policies may be available to current customers only. Also they may not be available to all tank owners and operators as a separate, stand-alone policy.

PETROMARK*

The Planning Corporation
 13347 Sunset Hills Road
 Reston, VA 22090
 (703) 481-0200
 Contact: Kathryn Martin
 * Currently not issuing new policies

Federated Mutual Insurance Company
 129 East Broadway
 Owatonna, MN 55060
 (507) 455-5200
 Contact: Bob Rinaldi

Oilmen's Fund
 350 Fifth Avenue, Suite 6805
 Empire State Building
 New York, NY 10018
 (212) 629-4290
 Contact: Peter Gerken

James Group Service, Inc.
 9th Floor
 230 West Monroe Street
 Chicago, IL 60606
 (312) 701-2724
 Contact: Jim Stewart

AIG - National Union Fire Insurance Company
 70 Pine Street
 New York, NY 10270
 (212) 770-3148

Liberty Mutual Insurance Company
 175 Berkely Street
 Boston, MA 02117
 (617) 357-9500

AIG - Fred S. James (Program Manager)*

P.O. Box 1675

Harrisburg, PA 17105

(800) 255-7112 (outside PA)

(800) 382-1122

* Designed for Small Businesses

Agricultural Excess and Surplus Company

Great American Insurance Companies

Westar Insurance Group

Bellevue, Washington

(206) 827-6000

Contact: Bruce Thiffault

General Star Management Company

P.O. Box 10354

Stamford, CT 06904

(203) 328-5903

Contact: Ron Austin

Environmental Impairment Purchasing Group

117 Mill Street

Box 584

Hillsboro, WI 54634

(608) 489-3221

Contact: Ed Hardy

Front Royal Group, Inc.

7900 Westpark Drive, A300

McLean, Virginia 22102

(703) 893-0900

Contact: Myra Anderson

Evanston Insurance Company*

Shand Morahan & Co.

Shand Morahan Plaza

Evanston, IL 60201

(312) 866-2800

Contact: Chuck North

* Available in IN, IL, WI

Travelers*

Frank B. Hall & Co. of Missouri

100 North Broadway

Suite 1700

St Louis, MO 63102

(314) 231-0100

* Third-Party Coverage Only

R.L. Jarrett*
7557 Rambler Road
Suite 650
Dallas, TX 75231

(800) 777-7440
Contact: Richard Benton

* Designed to Complement State Fund Coverage

Universal Underwriters Insurance Company
5115 Oak Street
Kansas City, MO 64112
(816) 753-5800

United States General Accounting Office

GAO

Testimony

For Release
on Delivery
Expected at
10:00 A.M. EST
Tuesday,
February 20, 1990

Underground Petroleum Storage Tank Owners'
Ability to Comply With Federal Financial
Responsibility Requirements

Statement of
Peter F. Guerrero, Associate Director
Environmental Protection Issues
Resources, Community, and Economic
Development Division

Before the
Subcommittee on Environmental Protection
Committee on Environment and Public Works
United States Senate



Mr. Chairman and Members of the Subcommittee:

The Superfund Amendments and Reauthorization Act (SARA) of 1986 required that we report to the Congress on whether owners of underground petroleum storage tanks could obtain liability insurance or meet the act's financial responsibility requirements by some other method.¹ These requirements are intended to ensure that tank owners have the resources to clean up any tank leaks and compensate anyone harmed by the leaks.

Our report, issued in January 1988, concluded that insurance for underground petroleum tanks was generally unavailable and that the alternatives to insurance permitted by the law, such as self-insurance, were not practical or available for small businesses.² Since thousands of tank owners might not be able to meet the deadline for demonstrating financial responsibility under consideration at the time, we recommended that the Environmental Protection Agency (EPA) phase the requirements in over a more realistic timetable. We thought that a gradual approach might permit the development of a more active insurance market and other financial assurance methods.

Since our report, EPA grouped firms owning underground petroleum storage tanks into four categories and phased in its financial responsibility requirements over 2 years starting from the regulation's issuance in October 1988. Category 1 firms, which are very large petroleum marketing firms, had to comply by January 1989; category 2 firms, which include large and medium-sized firms, had until October 1989. Category 3 firms, which comprise smaller firms, have until April 1990, and category 4 firms--which

¹These requirements can be satisfied by either the tanks' owners or operators. For convenience, we refer only to tank owners in this statement.

²Superfund: Insuring Underground Petroleum Tanks (GAO/RCED-88-39, Jan. 15, 1988).

include very small petroleum marketing firms; most tank facilities that do not produce, refine, or market petroleum; and all local governments--have until October 1990 to comply. We are pleased to be here today to discuss our report and update its findings to the extent we could in the time available.

OVERVIEW

In summary, because the category 1 firms generally can self-insure, they did not have problems complying with EPA regulations. Many of the estimated 500 firms in the second category appear to have satisfied the financial responsibility requirements through insurance or by coverage from special funds established by some states. However, it is uncertain whether a sufficient amount of affordable commercial insurance or state funds will be available to cover the last two categories of tank owners--especially the many thousands of small businesses. Recently one of the largest suppliers of tank insurance announced that it is suspending new policy sales, and another is reducing its area of operations. In addition, most states either have not submitted for EPA approval trust funds to help tank owners establish financial responsibility or have created funds that only partially satisfy the regulations' coverage requirements.

Firms that do not meet the financial responsibility requirements are potentially subject to large federal fines. Noncompliance, according to industry representatives, also violates tank owners' contracts with creditors and suppliers, which require them to operate in accordance with all laws and regulations. Additionally, noncompliance creates a risk that damages to the public and the environment from a tank leak may not be adequately compensated. Therefore, whether EPA should delay its financial responsibility requirements or suspend enforcement has again become a pressing issue.

EPA decided not to postpone the regulations or suspend enforcement for category 2 tank owners but has not yet announced a decision about the 1990 deadlines. Currently, there does not appear to be reasonable assurance that category 3 and 4 firms can meet the financial responsibility requirements. We therefore believe that EPA needs to consider further postponement of the requirements, for possibly up to a year, for these firms while it develops information showing that the rules can generally be met. Meanwhile, EPA needs to increase its collection of information on the cost and availability of insurance and the consequences of noncompliance on the business relationships of tank owners. At the same time, we think EPA needs to ensure, through a more active enforcement program, that category 1 and 2 firms comply with the financial responsibility rules.

BACKGROUND

EPA estimates that nationwide there are up to 2 million petroleum underground storage tanks at three quarters of a million facilities, such as gas stations, utility companies, or car dealerships. EPA believes that hundreds of thousands of these tanks have corroded and are leaking. About 8,000 cleanups have been completed since EPA began making cleanup grants to states in mid-1987, and another 24,800 cleanups are underway. Leaking tanks can contaminate groundwater--a drinking water source for half of our nation--and cause fires or explosions. To protect against such risks, the Hazardous and Solid Waste Amendments of 1984 required EPA to develop regulations to prevent, detect, and correct tank leaks. Issued in September 1988, these regulations set forth spill cleanup procedures and standards for tank construction and operation, effective over a 10-year period.

SARA subsequently directed EPA to issue regulations containing a \$1 million, per occurrence, minimum financial responsibility

requirement for owners of underground petroleum tanks.³ Noncompliance could subject tank owners to fines of up to \$10,000 a day. However, SARA allows EPA to suspend enforcement of financial responsibility requirements for 6-month periods for individual classes of owners if EPA determines that insurance and other financial assurance methods are generally unavailable and progress is being made toward meeting financial responsibility. Additionally, the law states that, in developing regulations, EPA may consider the impact of any rules on small businesses.

In October 1988, EPA published final regulations requiring all petroleum tank owners to maintain evidence of financial responsibility of \$1 million or \$2 million, depending on the number of their tanks.⁴ As discussed earlier, these regulations are to be phased in over 2 years by size category of tank owner.

Under the law, states can with EPA approval operate and enforce underground storage tank programs "in lieu of" the federal program. To obtain approval for these programs, states must (1) establish technical and financial responsibility requirements at least as strict as the federal government's and (2) provide for the enforcement of these requirements. EPA has one state program under consideration (Mississippi) and expects to approve about 13 others over the next 12 months.

GAO'S REPORT TO THE CONGRESS

In January 1988, we reported that uncertainty about potential losses had kept insurance companies out of the underground tank

³SARA also gave EPA discretion to set lower limits for low-volume tank facilities, referred to as nonmarketers, that do not produce, refine, or market petroleum.

⁴EPA originally published proposed financial responsibility regulations in April 1987, with implementation to have taken effect about June 1988.

market. Two sources provided virtually all the tank insurance sold in the United States in the 3 years prior to our report, and one of them had withdrawn from the market midway through 1987. The two firms had insured about 14 percent of U.S. tanks, mostly those owned by bulk sellers of petroleum products, known as jobbers. We also found that the alternatives to insurance permitted by the law, such as self-insurance, letters of credit, and surety bonds, were not feasible for most tank owners. Only the largest firms, such as the major oil companies and national bus companies, could use these alternatives because they were (1) expensive for smaller firms, (2) did not transfer risk, or (3) required more assets to be pledged than the average tank owner could afford. At the time of our review, relatively few states had established funds to clean up tank leaks, although we said that these funds might be the only hope for small firms to establish financial responsibility.

We related the insurance experience of eight tank owners of various sizes from around the country. Six of these firms had insurance expiring in 1988, and they were having extreme difficulty in replacing it; the other two had no insurance. Some companies with insurance reported increasing rates and declining coverage on their policies.

Our report recommended a phase-in of financial responsibility requirements to allow time for insurers to develop tank programs and tank owners to pursue insurance alternatives. We also recommended that EPA speed up implementation of the tank construction and operation requirements, which we believed were most important for protecting the public and the environment.

FINANCIAL RESPONSIBILITY COMPLIANCE EASIER,
BUT UNCERTAINTY STILL EXISTS

Since our January 1988 report, two developments have made it possible for more tank owners to comply with the financial

responsibility requirements. First, more insurance companies have started offering tank coverage. Second, more states have created funds to pay for tank leak damages and are using these funds to help owners meet EPA's financial responsibility regulations. Nevertheless, many small businesses may not be able to obtain insurance or state trust fund coverage.

According to EPA, about 15 sources are now offering liability insurance for underground petroleum tanks, including 1 company that specializes in tank owners with 25 or fewer tanks. However, one of the most active insurers (Petromark) recently announced that it is suspending new sales pending a review of its reserves, and another (Federated) is suspending new sales in some states with tank funds.

Within the last 6 months, we discussed tank owners' insurance prospects with representatives of EPA, the Small Business Administration, insurance companies, state agencies, and industry. These officials generally said that tank insurance was available on some terms to many businesses. According to EPA and industry representatives, the very large firms already required to meet the regulations have complied through self-insurance. In addition, an official of an association representing small gasoline dealers said that insurance was available to these dealers, although he did not know how many actually had it. However, industry representatives said that available insurance was expensive, did not always meet regulatory requirements, or was sometimes offered by companies with unproven track records.

Despite the availability of tank insurance, representatives of the groups we interviewed said that many small firms, including those not in the business of selling petroleum, such as farmers or operators of delivery vehicles, were not likely to qualify for insurance. A Small Business Administration official told us that these small companies were not insurable at present because they

knew little about tank technology or risk management and there was no actuarial history for their tank leaks. According to an EPA official, these firms, many of which have older, less safe tanks, will need to rely on the state trust funds for financial responsibility.

In January 1988 we reported that 12 states had established funds as of August 1987. The situation has improved. According to EPA, at this time, 34 states have created trust funds to pay for tank cleanups and in some cases compensate victims of leaks. EPA has given final or conditional approval to about 23 state trust funds so that tank owners can use them to satisfy, at least in part, the financial responsibility requirements. EPA expects that additional states will have approved funds by October 1990, in time for the financial responsibility deadline for the smallest tank owners. It should be noted that some of these tanks are in such poor condition that they will not qualify for coverage under state funds.

Most state funds are financed by gasoline taxes or tank fees. Many states place conditions on the eligibility of tank owners to use the fund to meet financial responsibility requirements, such as requiring owners to be in compliance with technical tank standards. In addition, most state funds will pay costs only above a specified deductible, and some limit or exclude third-party coverage. Therefore, tank owners will have to supplement the state fund coverage with insurance or other financial responsibility methods.

We discussed with EPA three options it could use to provide relief to businesses that cannot comply with the financial responsibility regulations. First, EPA can revise its regulations or support legislation to move compliance dates back. Second, it can formally suspend enforcement of the regulations, as permitted by the law. Third, it can exercise its discretion not to use its full enforcement authority to discover and penalize violations.

So far, EPA has followed this last approach. The Director of the Office of Underground Storage Tanks has advised EPA regional offices by memo that, for tank owners who cannot comply with the financial responsibility regulations, "alternative, non-punitive enforcement responses may be the most appropriate initial formal enforcement response--versus assessing penalties." Violations of the financial responsibility requirements are described in the memo as "low priority."

EPA was not willing to formally defer enforcement or postpone by regulation the deadline for category 2 firms that went into effect in October 1989, because it did not have sufficient evidence that insurance was "generally unavailable" to those larger firms. EPA has not decided on suspension or postponement of deadlines for the next two categories of firms required to comply in 1990. But EPA officials told us they would consider petitions for suspension or postponement if any are made. Under the 1984 amendments, anyone can petition EPA to delay implementation of regulations, and EPA is required to respond to the petition in the Federal Register. About a week ago, a group of trade associations representing mainly gasoline marketers requested that EPA suspend enforcement of the financial requirements.

We agree with EPA that the evidence on the availability of insurance did not justify postponing compliance by larger firms with the October 1989 deadline. However, as deadlines approach for smaller firms, it becomes increasingly important for EPA to have reasonable assurance that the insurance market or state funds will make compliance possible. In our opinion, it does not appear that EPA now has such assurance.

In addition to uncertainty over the availability of insurance and state trust funds, EPA needs to address another issue. Representatives of petroleum marketers raised a possible problem

resolved by flexible enforcement policies or a suspension of enforcement. According to the representatives, tank owners who cannot establish financial responsibility will violate contracts with their creditors and suppliers because such agreements commonly require that the owners comply with all laws and regulations to qualify for further credit or supplies. A suspension of enforcement would remove the threat of government penalties but not cure the contractual problem. EPA officials said that this situation may represent a real threat to tank owners but that EPA did not consider this issue when it developed the regulations.

Recently, following a recommendation we made to the EPA Administrator, EPA has begun to collect information on insurance availability. But this data collection effort is very limited. For example, it covers only half the insurance companies now writing tank insurance and does not provide much information on the insurance market in individual states. In addition, EPA has little information on the risks of noncompliance to owners' credit and supply arrangements. We think that EPA needs to actively collect more information so that it can determine when financial responsibility requirements should be imposed. If deadlines are deferred, it will be especially important for EPA to stress the enforcement of its standards for safe tank construction and operation.

MORE ACTIVE ENFORCEMENT NEEDED

As we have indicated, EPA has assigned a low priority to enforcement of the financial responsibility requirements. It plans to check on the compliance of category 1 and 2 firms in 13 states. But, at this time EPA does not intend to actively check tank owners' compliance nationwide and has no tank inspectors in its regional offices. It plans to rely mainly on state referrals of violations, although, according to EPA officials, the states have also assigned enforcement a low priority. Even if financial

responsibility violations are uncovered, EPA does not plan to penalize a firm unless, for example, its tanks are leaking and the firm cannot or will not clean up the leaks.

We believe EPA should modify its enforcement strategy. While it is reasonable to be flexible in penalizing firms that cannot comply with the regulations despite their best efforts, the law should be enforced when it is willfully disregarded by firms for whom deadlines become effective. Tank owners who incur the expense of compliance should not be placed at a disadvantage with competitors who could comply but do not. EPA needs to adopt a more active enforcement strategy. For example, it should monitor and enforce compliance in states where it is possible for categories of owners to obtain insurance or qualify for state trust fund coverage and should encourage states to do the same. Conversely, EPA should more closely monitor compliance with the technical standards in states where insurance coverage and state trust funds are not widely available.

CONCLUSIONS

In closing, Mr. Chairman, too much uncertainty exists about the insurance market for smaller tank owners and too few states have approved trust funds to reasonably ensure that category 3 and 4 firms can generally comply with the financial responsibility requirements at this time. Before EPA decides on when smaller firms can comply, it will need considerably more information on insurance and state trust fund availability and cost and on the effects of regulatory violations on the relations of tank owners with creditors and suppliers. In the meantime, we support postponing the effective date for deadlines on category 3 and 4 firms for a reasonable period--perhaps as long as 1 year. This should give states the time needed to establish trust funds and EPA time to better assess the whole situation.

In addition, to promote compliance with the law and more balanced competition among tank owners in categories 1 and 2, reasonable enforcement of the financial responsibility requirements needs to be ensured. The low priority EPA has assigned to enforcement could lead tank owners to believe that compliance with the requirements is unimportant.

In October 1989, we testified on underground storage tanks before a subcommittee of the House Small Business Committee.⁵ In that testimony, we recommended that the Administrator, EPA,

- determine what regulatory course to follow by (1) actively monitoring the cost and availability of tank insurance and other financial responsibility mechanisms and (2) evaluating how noncompliance will affect tank owners' credit and supplies and
- plan and implement a strategy to more actively enforce the financial responsibility requirements.

Although EPA has taken some actions to address our recommendations, it has not fully implemented them.

Mr. Chairman, this concludes my prepared statement. I will be happy to respond to questions that you or members of the Subcommittee may have.

⁵Ability of Underground Petroleum Storage Tank Owners to Comply With Federal Financial Responsibility Requirements (GAO/T-RCED-90-9, Oct. 31, 1989).



Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

Department of Environmental Quality

TESTIMONY BEFORE

U.S. SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ENVIRONMENTAL PROTECTION SUBCOMMITTEE

February 20, 1990

Mr. Chairman and Members of the Committee. My name is Richard Reiter, Manager of the Oregon Department of Environmental Quality's Underground Storage Tank (UST) compliance program. Oregon thanks you for this opportunity to tell you about our experience in providing financial assistance to small businesses, especially those in financial assurance categories III and IV, who are trying to comply with the recently published underground storage tank regulations. Although it may be a little premature to declare our program a success, we have reason to believe our approach has merit and the concepts are worthy of consideration by other states and this committee.

SUMMARY

As you know, environmental protection is very important to Oregonians. We've been leaders with such programs as the bottle bill; recycling of newsprint and cardboard; restoration of our rivers, particularly the Willamette River; toxic waste reduction and others. Besides broad public support for environmental programs, Oregon businesses have stepped up and made the investments to meet the standards. In most cases, the debate with industry in Oregon is not over the standard but the length of the compliance schedule and what level of state financial assistance is possible. Historically this assistance has been in the form of a 50 percent pollution control equipment tax credit.

We are finding that Oregon industry's attitude with the underground storage tank requirements is comparable to previous environmental programs. There is general agreement the UST technical standards and ten year phase-in are necessary to protect groundwater and are reasonable. There is less agreement on the financial responsibility requirements, particularly the need to show \$1 million of coverage per occurrence, exclusive of attorney's fees, for small facilities. Without specific site information on potential contamination and/or information on the condition of the tank and piping, pollution insurance is not currently available to most small businesses. And the other big question is, how can I afford these major new expenses to upgrade or replace and to purchase insurance on a thin profit margin?

By far, most of the 3,000 motor fuel retail outlets in Oregon are independently owned and/or operated by small businesses. Fewer than 200 are owned and operated by major oil companies. Often the property and improvements represent the net worth of the owner or operator. In some cases, this net worth, upon sale, represents the future retirement income of the small business owner or operator. So while agreeing with the responsibility to protect and enhance the environment, these small business owners or operators are wondering how they can meet significantly higher operating costs and expenses and still maintain their limited net worth in the business. Without some form of financial assistance, severe social effects such as numerous closures of small businesses and reduced availability of motor fuel in many parts of Oregon are expected.

It was to address these concerns that the 1989 Oregon Legislature held hearings on several bills. They first considered and rejected the concept of a fully funded state insurance program. To run a fiscally sound, actuarial based state insurance program would require underwriting criteria equivalent to or more stringent than private insurance programs. For the program to remain financially solvent, premiums would also equal or exceed premiums being quoted by private insurers. Anything less would create a potential future unfunded state liability which would violate Oregon's state constitution. Furthermore, substantial administrative costs would be incurred to set up a state program, to duplicate services which are theoretically available through the private sector.

The Oregon Legislature also considered and rejected a program to fund some or all of the corrective actions necessary to clean up sites from spills or releases. Aside from the costs and potential financial liability to the state, it was difficult getting over the hurdle of who really should be held liable for these costs, the public or the responsible parties? They

concluded that funding corrective actions was not a state responsibility.

What the Legislature finally concluded was that financial assistance was needed to bring the UST systems up to standards and thereby make them insurable. What they passed were a series of three financial assistance programs intended to provide help to assess soil contamination, tank and piping conditions, undertake soil cleanups, and upgrade or replace tank systems. These programs are in addition to a five year extension of the pollution control equipment tax credit program which also covers pollution control equipment on tanks. The stated public policy for the new programs is to maintain an adequate supply of competitively priced motor fuels throughout the state, particularly in rural areas, and make sites insurable.

The first program is a grant reimbursement of up to 50 percent not to exceed \$3,000 to do a site assessment and tank tightness test. If the site and tank systems are certified as being in compliance with the rules, we believe the site will be insurable at a reasonable price - at least this is what we are being told by representatives of Northwest insurance brokers. Premiums being quoted in the Northwest for clean sites with upgraded tanks vary from \$3,000 to \$5,000 per year per facility. There is also a deductible of between \$5,000 and \$25,000. There may or may not be a slight surcharge for multiple facility locations. Northwest insurance brokers believe the annual premium cost will fall over time as an actuarial history is compiled. In addition, the information collected can be used to determine what type of soil remediation or tank upgrading program is needed to bring the facility into compliance.

A second program is a loan guarantee of 80 percent not to exceed \$64,000 for soil remediation, upgrading or replacement. (Groundwater cleanups are not included in this program because the cost would rapidly deplete the fund. It is unlikely that most small businesses facing a groundwater cleanup will have sufficient cash flow to finance a loan to do both the groundwater cleanup and rebuild the facility to meet new tank standards.) It is hoped that the guarantee will be a sufficient incentive to allow banks to make conventional loans for these purposes. Right now most Northwest banks are not approving loans on properties with underground tanks for fear of becoming responsible parties during a cleanup. Without the guarantee, there is insufficient collateral, other than land, in most motor fuel retail businesses to cover the banks liability exposure, hence few if any new loans.

The third program creates a subsidized interest rate fixed at 7.5 percent to qualifying borrowers obtaining loans for soil remediation, upgrading or replacement. The loan terms are not to

exceed ten years. This program not only lowers the monthly payment, but significantly lowers overall interest charges.

In authorizing these three programs, the Oregon Legislature accepted that fact that not all small businesses with underground storage tanks will survive the economic impact of the Federal requirements. What they hope will happen is that enough financially sound small businesses will qualify for a loan to meet the legislative intent of an adequate supply of competitively priced motor fuel throughout the state and affordable insurance.

Revenue for the new programs is coming from a new \$10 UST regulatory fee on each load of petroleum withdrawn from a storage terminal. It is estimated that over the next four years, until August 31, 1993, approximately \$12 million will be collected for these programs.

To date we have mailed some 890 applications for the grant reimbursement program. Fifteen have been returned for processing and one has been approved. We have mailed another 450 loan guarantee/interest rate subsidy applications. Two have been returned for processing. At this interest level we can fund all applications for grant reimbursement and are over extended on the loan guarantee/interest rate subsidy programs. (Since the revenue for the state program is limited, it would appear we will only be able to financially assist about 245 business with the loan guarantee program.)

The Legislature also discussed the need to recommend to you the need to reconsider the financial responsibility requirements and deadlines. I wish I could report there was a clear consensus on this issue, but there was not. In setting up the new financial assistance programs, the Legislature authorized them for three years knowing that not all the construction work could be accomplished before October 26, 1990. They further restricted our ability to apply certain state enforcement authorities, such as a prohibition against fuel deliveries for facilities not in compliance with the rules, until the end of the three year period. But beyond that, they advised the Department to use enforcement discretion in applying any other enforcement authority for facilities attempting to come into compliance.

Because of the marginal economic condition of many of these small businesses, most are merely delaying a decision to either close or spend the money to upgrade or replace. A one year delay will merely postpone the day of reckoning for these marginal businesses. It is unlikely that their business profits will change enough to make the decision any easier a year or two from now. However, even in Oregon with our financial assistance programs, a number of businesses will be in technical non-

compliance until the loan guarantee can be arranged and the construction work completed.

In the absence of any change to the financial responsibility requirements, I believe we will apply, on behalf of our small businesses, for one or more of the six months extensions identified in the EPA rules. We will attempt to show that our financial assistance programs are creating the opportunity for our small businesses to come into compliance with the requirements, including the financial responsibility requirements, within a three year period.

A more positive approach would be for Congress and/or EPA to provide the opportunity for a variance on a facility-by-facility basis. Under a variance approach, we could enter into a specific compliance order for the soil remediation, facility upgrade and financial responsibility by a date certain.

One other matter I'd like to bring to your attention is the probable significant contribution that the Portland Office of the Small Business Administration (SBA) may make to Oregon's financial assistance programs. They are actively interested in substituting an SBA loan guarantee for the state guarantee after the soil remediation and system upgrade are completed. In effect, the state will guarantee the loan during the period when environmental considerations are paramount, the SBA will guarantee the economic risk over the life of the loan.

The benefits to all parties are: 1) the Department gets to roll over its money quickly (60 to 120 days) to assist new applicants, the SBA gets to support small businesses in Oregon, and the banks and applicant get a more complete guarantee (90 percent up to \$155,000 on total project costs, not just the UST portion). I would like to personally extend my thanks to Phil Gentry of the SBA for his active participation on a workgroup to develop the rules and application procedures for these financial assistance programs and in showing us how the SBA can be a major factor in the program's success. I think it is an excellent example of partnerships that are possible between federal and state agencies and the private sector.

Presented below is a more complete description of why and how we developed these programs. Also discussed are some of the impediments that we've identified to date that may cause the programs to be less successful than anticipated.

I would be pleased to answer any questions that you have.

BACKGROUND

Geographically, Oregon is the tenth largest state in the United States with a total area of 97,073 square miles. It is approximately 300 miles north and south by 350 miles east and west. On its Western boundary is the Pacific Ocean; the Eastern half of the state is predominately a high desert plateau. In between are two mountain ranges, the Coast and Cascade Mountains, separated by the 50 to 75 mile Willamette Valley.

Oregon's current population is 2.6 million, 1.8 million live in the populous Willamette Valley in the Western part of the state. Fifty-seven percent of Oregon's population lives in 242 cities, ranging in size from Granite at 13 to Portland at 420,000. Forty-one percent of the cities have a population under 1,000, seventy-seven percent under 5,000 and fully ninety-five percent under 20,000. Eastern Oregon is sparsely populated and it is not unusual when travelling to or in Eastern Oregon to find facilities for the motoring public from 25 to 50 miles apart. Although primarily agricultural in nature, Eastern Oregon has been attempting recently to encourage tourists to come and enjoy the spectacular high desert plateau country. Availability of facilities for the motoring public are key to maintaining and improving the tourist economy in Eastern Oregon.

There are about 6,000 locations in Oregon with tanks that are covered by the new federal UST standards. About 17,000 tanks are installed at these locations. Of the 6,000 locations, some 3,000 are non-retail businesses or government operations that have tanks for their own convenience. The other 3,000 locations are service stations, convenience stores or rural markets with gas pumps or other retail outlets.

Of the retail locations, about 200 facilities are owned and operated by major oil companies. These are generally located in urban areas along freeways or in other high volume areas. Another approximately 1300 are company-owned but leased to private operators who are generally responsible under the lease for day-to-day operation and compliance with regulations, including environmental regulations. The remaining 1500 are independently owned and operated retail locations.

It is estimated that in Oregon it will cost about \$6,000 to conduct a soil assessment and tank tightness tests at a typical service station with three underground tanks. It is also estimated it will cost from \$40,000 to \$100,000 to upgrade or replace tanks at a typical service station with three underground tanks. Up to \$10,000 of this cost may be to conduct soil cleanup. It is estimated that it will cost from \$5,000 to \$40,000 per year to arrange insurance coverage for a typical service station depending on the age of the underground tank system, type of soil,

depth to groundwater and likelihood of past contamination from surface spills or tank and piping leaks. In many cases, insurance is not available unless a soil assessment and tank tightness test are conducted to search for past contamination.

1989 OREGON LEGISLATIVE CONSIDERATIONS

Oregon's legislature meets in January of every odd-numbered year for about a six-month period to conduct state business. In 1989, two bills were introduced relative to underground storage tanks; one would have established a one cent gas tax to fund UST remedial actions and the second would have allowed use of an existing Water Pollution Control Bond Fund for soil cleanups and system upgrades. An informal legislative committee was set up under the direction of Representative Fred Parkinson to study the UST "problem". After months of discussion, the following principles began to emerge from Representative Parkinson's workgroup:

1. There was a general consensus that leaky tanks were a threat to Oregon's environment, particularly its limited ground water resource. It was further agreed that the federal technical standards are necessary prevent future pollution. It was also agreed that the ten year phase-in schedule for existing tanks was a reasonable requirement.
 2. There was a general consensus that tank owners and operators should be responsible for spills and leaks from underground storage tanks. It was also agreed that "affordable" insurance was only available to a few of the largest distributors. Most small retailers having one to twelve tanks were "going bare" hoping against hope they would not have a spill or leak.
 3. Although there was intense lobbying for a fully funded state insurance program, a bill to that effect was never drafted. Most participants understood that to remain solvent, any state insurance program would have to have very strict underwriting criteria. With strict underwriting criteria, premiums would likely approach private market premiums and therefore negate any benefit of a state program.
- Further, representatives of the insurance industry stated that "affordable" insurance would be available to sites that were clean, or cleaned up, that had a tank system in compliance with federal new tank standards.
4. The first financial assistance program to emerge from these extensive discussions was a grant reimbursement program to pay up to 50 percent but not to exceed \$3000

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for a soil assessment and tank tightness testing at a facility location. The soil assessment was intended to look for evidence of past contamination from surface spills and/or tank and piping leaks. The tank and piping tightness test would provide information on the condition of the UST system.

It was concluded there would be three major benefits to the soil assessment and tank tightness testing program:

a. Early detection of existing contamination. Based on results, the tank owner would have better information as to the next step that might have to be taken.

b. Information, particularly if there was no soil contamination and the system appeared tight, to be used to obtain insurance.

c. Information to be used in determining whether or not to upgrade or replace the tank system.

5. The second program to emerge was a loan guarantee program covering 80 percent not to exceed \$64,000 to do soil cleanup and upgrade or replace the tank system. The loan guarantee program takes advantage of the ability of existing commercial lending institutions (banks, savings and loans and credit unions) to process loans from a credit worthiness standpoint. It also limits the amount of money the state has to raise, since the actual expense is the dollars necessary to cover projected defaults. With the concurrence of the commercial lenders, we are leveraging our dollars ten to one (\$13.8 million in loan guarantees, \$1.375 million in reserves to cover defaults.)

The legislature also directed the department to develop a priority system that gave preference to:

- a. Small businesses,
- b. Rural population centers,
- c. The financial condition of the applicant, and
- d. Retail sales of motor fuels.

The loan guarantee requires a 20 percent down payment by the borrower to insure that they maintain some control over the contractor and total project costs. It also requires the commercial lenders to accept 20 percent of the risk on the loan to insure that they apply their

normal underwriting criteria in processing a loan. We understand that the banks will be looking for collateral other than the property, to cover their 20 percent exposure.

6. The third program to emerge was a subsidized interest rate fixed at 7.5 percent to the borrower. A subsidized interest rate has the effect of lowering the monthly payments as well as lowering significantly the total interest charges.

The mechanism used to lower the interest rate is to pay the commercial lenders a tax credit for the difference between 7.5 percent and a non-subsidized interest rate for a loan of like terms and conditions. Recently, agreement was reached to set the non-subsidized rate as the prime rate plus three points.

In summary, the purpose of all three programs is to maintain an adequate supply of motor fuels at competitive prices throughout Oregon. Secondly, it is hoped that once a soil cleanup has been completed and the system upgraded or replaced, the tank system will be insurable via the private insurance market at affordable rates.

The Legislature also recognized that market forces, unrelated to environmental considerations, is dramatically changing the way fuels are distributed in Oregon. Although we don't have self-serve stations, it is possible for commercial customers to purchase their motor fuel at unattended, card lock operations. Card locks are putting tremendous economic pressure on many rural and small town full service stations. The other major trend is a consolidation of the petroleum suppliers and distributors in Oregon. Major oil appears mainly interested in the high volume stations along freeways or similar high volume, urban retail locations. They also appear to generate significant revenue from the ubiquitous convenience stores that all the majors have built.

The Legislature also assumed that Congress and/or EPA would have to delay enforcement of the financial responsibility rules for up to three years. Even though they have put financial assistance programs in place, there are not enough contractors in Oregon to get all the stations that want to stay in this business in compliance with the technical standards before October 26, 1990. Anticipating a delay, they have suspended for the 3-year life of the programs our most effective state enforcement tool - the ability to prohibit fuel deliveries to any facilities not in compliance with applicable rules, for the duration of the programs for failure to obtain financial responsibility.

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What follows is a more detail discussion of the three financial assistance programs and some of the implementations issues that we have had to deal with.

GRANT REIMBURSEMENT PROGRAM

Since temporary grant reimbursement rules were adopted by our governing body, the Environmental Quality Commission (EQC), on September 15, 1989, we have mailed a fact sheet to some 7,500 property owners, tank owners and permittees announcing the program (see Attachment I). In response to that fact sheet we have mailed 720 applications. Those 720 applications will probably cover more than 1000 physical locations when multiple ownerships of facilities are considered. Each week we continue to receive a few new requests for grant application forms.

Based on the revenue authorized by the legislature, we are allocating money to fund grants at approximately 1,130 locations, at an estimated cost of \$3,390,000 if every site qualifies for the full \$3,000. Grant reimbursement applications will be processed on a first-come first-serve basis.

Our projected allocation to grants seems to be adequate to satisfy the needs known to date. The big unknown is the number of people proceeding to do the work and not requesting an application beforehand. Work must be completed prior to receiving reimbursement from DEQ.

Along with each application we sent a postcard to solicit early information on the types of businesses requesting grant information. Of the 139 postcards returned, 98 (70%) were from motor fuel retail locations, 25 (18%) from commercial, non-retail motor fuel users, 12 (9%) from government agencies and 4 (3%) from other businesses.

To date, we have received fifteen applications for actual reimbursement. We have approved one application. In the other cases, the applications were incomplete and we are waiting for more information to come in.

LOAN GUARANTEE/INTEREST RATE SUBSIDY PROGRAMS

On October 20, 1989, the EQC adopted temporary rules to implement the loan guarantee and interest rate subsidy programs. One of the most difficult issues to resolve was a consistent definition to be used by the commercial lending institutions, DEQ and the Department of Revenue for the interest rate of a "non-subsidized loan of like terms and conditions". The current agreement which will be included in the final rules is to use the prime interest rate as set by either First Interstate Bank of Oregon, N. A. or

United States National Bank of Oregon plus 3 points on the day the loan is issued.

A second issue was to develop a priority system for the loan guarantee program that gives preference to small businesses retailing motor fuels in rural areas. To do that, we have come up with a numerical ranking system involving five, ten-point considerations for retailers of motor fuel and two, ten-point considerations for non-retailers. In any one month 60 percent of the money will go to proposals that score 30 or more points, 30 percent to proposals between 16 and 29 points and 10 percent to proposals scoring 15 or less points. Monies not allocated in any one month will be rolled forward and redistributed with the new monthly allotment. Pages three and four of the attached loan guarantee application contain the pricing factors (See Attachment II).

We have allocated money to fund approximately 245 loan guarantees. We are reserving \$1.375 million to pay for any loan defaults that occur over the life of the program.

A third issue was how to determine eligibility for the 7.5 percent fixed interest rate subsidy. Initially we proposed draft rules that would have applied the above-described numerical ranking system to an application for an interest rate subsidy. Upon review by the Attorney General's office, we learned that the EQC has very limited rulemaking authority over the interest rate subsidy program. The EQC authority is limited to setting a maximum interest rate that can be charged for this type of loan and allocating the portion of the revenue in the UST Compliance and Remedial Action Fund that can be used for paying the tax credit. As a result of this opinion, the interest rate subsidy is being offered on a first-come first-serve basis to approximately 245 motor fuel businesses. We are allocating some \$3.875 million to pay for the interest rate subsidy.

It should be noted, in case it is not clear, that the loan guarantee and interest rate subsidy programs are separate and independent programs. It is possible for a business to apply for either a loan guarantee or an interest rate subsidy or apply for both. Depending on funds available at any point in time for each program, an application will either be approved or denied.

Since October 20th, we have had numerous meetings with banking officials and insurance companies to work out the steps involved in securing a guaranteed loan. Attached for your information is a flow chart that we are making available to applicants and loan officers which we hope will make the program more understandable (see Attachment III).

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One thing we realized early on is that DEQ, the insurance companies and the commercial lending institutions each require slightly different information regarding the site assessment and tank tightness testing. Although we tried to come up with a standard set of conditions, agreement could not be reached because we each have a slightly different interest in the property. Consequently, one of the precautions we have given an applicant is to make all the necessary contacts first to learn everyone's requirements before starting work on the site.

As with the grant reimbursement program, we developed a fact sheet on the loan guarantee and interest rate subsidy programs and mailed it to the same 7,500 persons mentioned earlier (see Attachment IV). As a result of that mailing, we have mailed 330 applications to date. Two loan guarantee applications have been received. Both were incomplete and we are now seeking to get the additional information required. Each week we continue to receive additional requests for loan guarantee and interest rate subsidy applications.

If all these applications are returned seeking the maximum loan guarantee and interest rate subsidy, there will be insufficient revenue available in the UST Compliance and Corrective Action Fund to approve those that will be submitted last.

Along with each loan guarantee and interest rate subsidy application we sent a postcard to solicit early information on the types of businesses requesting application information. Of the 27 postcards returned, 25 have come from motor fuel retail operations, 1 from a commercial, non-retail operation and 1 other. That clearly suggests the potential applicants will be from operations considered high priority under the law and rules.

OTHER CONSIDERATIONS

In our many meetings with the commercial lending institutions and other interested parties, one issue that continues to surface is a concern for the applicant's ability to come up with the 20 percent down payment. Historically, the service station industry has not secured many conventional loans from commercial lending institutions to set up their businesses. There is a concern by some that many of the smaller motor fuel retailers will be unable to secure financing because they will not have cash for the down payment and will not be able to borrow this additional money.

In January, 1990 the Department of Revenue made the first transfer of funds into the UST Compliance and Corrective Action Fund as a result of the September payments of the \$10 UST regulatory fee. During the 1989 legislative session, a monthly average payment of \$250,000 was estimated. The recent transfer was for \$190,000 or 75 percent of the estimated amount. Since this is a new

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regulatory fee, it is difficult to judge how representative September was. The next quarterly payment was due January 31; we should receive the transfer payment around March 15. That will cover the months of October, November and December, 1989. We are hoping that this quarterly payment hits the estimate, otherwise, we may be required to adjust downward the number of grant reimbursements, loan guarantees and interest rate subsidies we can fund.

In our continuing meetings with the insurance industry, there is reinforcement of the thought that Oregon is on the right track in helping small businesses to meet insurance underwriting conditions. The two biggest impediments to private insurance are lack of knowledge of the extent of potential contamination from past practices and the condition of the tanks and piping. By making financial assistance available to examine the property, tanks and piping and to upgrade or replace (the apparent preference of the insurance industry) the equipment, private insurance is more likely to be made available.

At an EPA conference on underground tanks in November, 1989, national insurance representatives echoed the Northwest position - insurance is available to those sites that are tested, and cleaned up if necessary, and that comply with technical standards. Those same insurance representatives stated rather emphatically that they don't believe there is one existing state insurance program that will pass muster if subjected to the same examination that private insurers are by State Insurance Departments. It is their opinion that all the current state insurance programs are underfunded on an actuarial basis. The principal reason is that in most cases no underwriting effort is being made to screen out the known contaminated sites up front.

We are also excited about the potential involvement of the U. S. Small Business Administration (SBA) in Oregon's loan guarantee program. Assuming a successful soil remediation and tank upgrade or replacement, the SBA is interested in substituting a federal loan guarantee for the state guarantee after the construction project is complete (say 30-60 days into the loan period). The advantage to the state is that our loan guarantee commitment is satisfied on that project and we can seek another project to guarantee. Further, the state guarantee will not have to cover the economic risk over the life of the loan. The benefit to the applicant and commercial lending institutions is that the SBA loan guarantee can be up to 90% and cover up to \$155,000. In addition, the SBA guarantee can cover other project costs not related to the underground storage tank system (i.e., improvements to service stations or convenience stores, new lighting or fencing, etc.). Also, in the case of a default, the SBA assumes responsibility for collections where under the state program the commercial lending institutions are responsible for collections.

FEDERAL FINANCIAL RESPONSIBILITY DEADLINE - POTENTIAL DEFERRAL

As mentioned earlier, the Oregon Legislature has assumed that either you and/or EPA will move the October 26, 1990 financial responsibility compliance deadline out into the future or temporarily suspend enforcement. They made this assumption for Oregon, knowing that too few contractors were available to get all the soil remediation, tank upgrades or tank replacements work done by the 26th. Beyond this assumption, no clear consensus exists in Oregon on what action you should take in this matter.

On the one hand, the larger oil companies are already in compliance because of their ability to self-insure. At least some of the distributors are in compliance because they can afford to buy insurance on the open market. Others, including independent dealers capable of getting a conventional loan or participating in our financial assistance program, will get their site clean and system upgraded in time to purchase insurance. Considering the investment already made by these facilities, they will obviously object if a compliance break is given to the marginal small business.

On the other hand, it is assumed that even with a time extension, the marginal facilities will continue to procrastinate. This may be true regardless of how successful our financial assistance programs are because they want to save the annual premium costs whenever possible. Other than avoiding the imposition of civil penalties, little enforcement presence is possible by EPA and most states, given limited resources.

All things considered, I believe the Department leans toward leaving the requirements in effect, but provide for variance on a case-by-case basis. In the absence of variance authority, we may well petition EPA for several six month delays on the strength of our financial assistance programs bringing facilities into compliance.

- Attachment I: Money for USTs - Oregon Offers Grants for UST Site Checks
- Attachment II: UST Loan Guarantee Certificate and Interest Rate Subsidy Application
- Attachment III: Flow Chart for Applicant
- Attachment IV: UST Loan Guarantees



ATTACHMENT 1

MONEY FOR USTs

Oregon Offers Grants for UST Site Checks

SEPTEMBER 1989

OREGON'S SOLUTION

The federal Environmental Protection Agency (EPA) adopted new technical standards for underground storage tank (UST) systems in 1988. EPA's standards require upgrade or replacement of existing UST systems. Insurance coverage for USTs is also required by EPA. Most insurance companies require proof that the tanks do not leak and that the soil at an UST facility is clean before writing an insurance policy. The cost of complying with these standards will place a heavy financial burden on small businesses in Oregon. The 1989 State Legislature passed a bill that sets up an Oregon solution to these financial hardships by providing reimbursement grants to assist tank owners and operators with the cost of assessing site and tank conditions.

FACILITY ASSESSMENT REIMBURSEMENT GRANTS

Grants are available for partial reimbursement of the costs for tightness testing of tanks and for performing soil assessments to identify contamination at sites with tanks that contain motor fuel. The law allows for reimbursement of up to 50 percent of the costs, but no more than \$3000 per facility. Reimbursement grants will be issued on a first come, first serve basis to approximately 1100 UST facilities. To receive a reimbursement grant the tank tightness test and soil assessment must be conducted in accordance with

DEQ rules; the facility must be operating in compliance with DEQ rules; and the grant reimbursement application must be made prior to February 23, 1993. Only the permitted tank owner, property owner, or permittee can qualify for the reimbursement grant.

Rules were finalized on September 15, 1989. Only work performed and costs incurred after September 1, 1989, will be eligible for reimbursement.

REIMBURSEMENT GRANT ELIGIBILITY

Only motor fuel tanks with valid DEQ permits are eligible for the reimbursement grant. The reimbursement grant will cover tank tightness testing and soil assessment in the vicinity of the tanks.

Other requirements include:

- Licensed service providers must perform tank tightness tests.
- Soil assessment must be directed or supervised by a registered engineer or geologist.
- The property owner, tank owner, and permittee must sign the grant application. Only one grant is available for each motor fuel facility.



Oregon DEQ
UST Program
811 S.W. Sixth Avenue
Portland, OR 97204

BULK RATE
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT #852

MORE INFORMATION

If you wish to receive a facility assessment reimbursement grant application, please fill out the attached card and return it to DEQ.

PUBLIC HEARINGS

Public hearings are scheduled to present the new UST reimbursement grant rules and obtain comments. All meetings are scheduled from 3:00 to 5:00 p.m. Meeting locations are:

BEND

December 11, 1989
Cascade Natural Gas
334 N.E. Hawthorne

PENDLETON

December 12, 1989
Blue Mountain Community College
Room P12, Pioneer Hall
2411 N.W. Garden

PORTLAND

December 12, 1989
DEQ Headquarters
Fourth Floor
811 S.W. Sixth Avenue

MEDFORD

December 14, 1989
City Council Chambers
Medford City Hall

EUGENE

December 15, 1989
Lane Community College
Room 308, The Forum
4000 E. 30th Avenue

Written comments regarding the reimbursement grant rules may be mailed to DEQ and must be received before 5:00 p.m. December 15, 1989.

Please contact DEQ's Underground Storage Tank Program if you have further questions.



DEQ
Underground Storage Tank Program
811 S.W. Sixth Avenue
Portland, OR 97204
(503) 229-5733
or toll free in Oregon 1-800-452-4011

UST LOAN GUARANTEES

Rules are being developed for the UST loan guarantee and interest rate subsidy programs. As soon as they are complete, a notice will be sent to all tank owners and permittees.

DEQ may guarantee 80 percent of a loan balance up to \$64,000. Guaranteed money may be used for minor soil remediation, tank upgrade, and tank replacement. A subsidized interest rate of 7.5 percent may be available to some loan guarantee applicants. Rules must be completed before any loan guarantees or interest rate subsidies may be issued.

Yes, I would like to receive a reimbursement grant application for DEQ's new UST Financial Assistance Program.

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

Return to:
Oregon Department of Environmental Quality
UST Reimbursement Grant
811 S.W. Sixth Avenue
Portland, OR 97204



OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY UST LOAN GUARANTEE CERTIFICATE AND INTEREST RATE SUBSIDY APPLICATION



Instructions: Use the Loan Guarantee checklist to fill out this application.

SECTION A

For DEQ Use Only

App.#: _____

Date Rec'd: _____

APPLICANT:

Name: _____

Date: _____

Address: _____

Telephone Number: () _____

City

State

Zip Code

FACILITY INFORMATION

UST Facility Number: _____

Facility Address: _____

Facility Name: _____

Tank No.	Permit No.	Motor Fuel Stored
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

TANK OWNER:

Name: _____

Address: _____

City

State

Zip Code

Phone: _____

X _____

PROPERTY OWNER:

Name: _____

Address: _____

City

State

Zip Code

Phone: _____

X _____

PERMITTEE:

Name: _____

Address: _____

City

State

Zip Code

Phone: _____

X _____

*NOTE: The applicant must be the tank owner, property owner or permittee.



SECTION B**DESCRIPTION OF UST PROJECT:**

Sketch map of UST facility.

Please show:

- 1) Property boundaries
- 2) Location of structures
- 3) Location and identification of underground storage tanks/piping
- 4) Streets

This map does not have to be to scale.

Description of underground storage tank project:

Existing Tank No.	Replace System	Upgrade and/or Addition					
		Leak Detection	Cathodic Protection	Overfill Prevention	Spill Prevention	Tank Lining	Piping
	☐	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐	☐
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	☐	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐	☐

- ☐ Phase I Vapor Recovery Equipment
☐ Phase II Vapor Recovery Equipment

Describe any additional work required to complete the UST system upgrade or replacement (for example, replacement of fueling apron, pump islands, etc.)

SECTION C**NOTICE OF COMPLIANCE:**

Attach a copy of the DEQ Notice of Compliance for the soil assessment and tightness testing. Or complete and submit the work in the soil testing and tightness testing application. If you need an application, contact DEQ's underground storage tank program.

- ☐ Soil assessment and tightness testing previously completed and notice of compliance attached.
☐ Results of soil assessment and tightness testing attached.
☐ I plan to replace my tanks. I will not be performing a tightness test.



ATTACHMENT 11

SECTION D

PRIORITY SYSTEMS INFORMATION:

Please mark the appropriate box for each question and provide any additional information requested.

Any question left unanswered will receive no points.

1. Retail Motor Fuel Facility. Answer all questions

A. Total Eligible Project Expense: * \$

- | | |
|---|--|
| ☐ \$40,000 or less, [10 pts.] | ☐ \$80,001 to \$100,000, [4 pts.] |
| ☐ \$40,001 to \$60,000, [8 pts.] | ☐ Over \$100,001, [2 pts.] |
| ☐ \$60,001 to \$80,000, [6 pts.] | |

\$ Please attach the eligible expense list filled out by a licensed UST service provider. DEQ recommends you obtain at least three bids or estimates, as higher costs will result in lower priority ranking.

B. Road distance to Other Retail Motor Fuel Facilities. No more than two motor fuel facilities within:

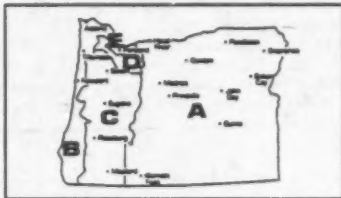
- | | |
|---|--|
| ☐ 30 road miles, [10 pts.] | ☐ 15 road miles, [4 pts.] |
| ☐ 25 road miles, [8 pts.] | ☐ 10 road miles, [2 pts.] |
| ☐ 20 road miles, [6 pts.] | |

Name and address of two nearest retail motor fuel facilities:

C. For Facilities Retailing Motor Fuel Within an Incorporated City:

- | | |
|--|--|
| City: _____ | Population: _____ |
| ☐ Under 2,000, [10 pts.] | ☐ 10,001 to 20,000, [4 pts.] |
| ☐ 2,000 to 5,000, [8 pts.] | ☐ Over 20,000, [2 pts.] |
| ☐ 5,001 to 10,000, [6 pts.] | ☐ Facility not within an incorporated city (Answer question D). |

D. For Facilities Retailing Motor Fuel Outside Incorporated Cities:

- County: _____ Nearest City: _____
- Choose your facility location from this map.
- | | |
|---|--|
| ☐ Zone A [10 pts.] |  |
| ☐ Zone B [8 pts.] | |
| ☐ Zone C [6 pts.] | |
| ☐ Zone D [4 pts.] | |
| ☐ Zone E [2 pts.] | |
- Within the Portland Metropolitan Service District in Clackamas, Multnomah, and Washington Counties.
(See enlarged map included in this packet)

E. Annual Motor Fuel Throughput in gallons:

- | | |
|---|---|
| ☐ Less than 100,000, [10 pts.] | ☐ 300,001 to 400,000, [4 pts.] |
| ☐ 100,000 to 200,000, [8 pts.] | ☐ Over 400,001, [2 pts.] |
| ☐ 200,001 to 300,000, [6 pts.] | |

F. Gross Annual Sales Receipts (Two year average, Retail motor fuel facilities only)

- | | |
|--|--|
| ☐ Less than \$250,000 [10 pts.] | ☐ \$750,001 to \$1,000,000 [4 pts.] |
| ☐ \$250,000 to \$500,000 [8 pts.] | ☐ Over \$1,000,001 [2 pts.] |
| ☐ \$500,001 to \$750,000 [6 pts.] | |

Please attach documentation of your previous two years gross sales receipts for the facility.
Include all motor fuel and non motor-fuel sales.

For DEQ Use
Only

App.#:

Date Rec'd:

A _____ pts

B _____ pts

C _____ pts

D _____ pts

E _____ pts

F _____ pts

Total:



2. Non-retail Motor Fuel Facility, answer both questions.

A. Total Eligible Project Cost: * \$

- ☐ \$40,000 or less, [10 pts.] ☐ \$80,001 to \$100,000, [4 pts.]
☐ \$40,001 to \$60,000, [8 pts.] ☐ Over \$100,001, [2 pts.]
☐ \$60,001 to \$80,000, [6 pts.]

☒ Please attach the eligible expense list filled out by a licensed UST service provider. DEQ recommends you obtain at least three bids or estimates, as higher costs will result in lower priority ranking.

B. Gross Annual Sales Receipts (Two year average)

- ☐ Less than \$250,000 [10 pts.] ☐ \$750,001 to \$1,000,000 [4 pts.]
☐ \$250,000 to \$500,000 [8 pts.] ☐ Over \$1,000,001 [2 pts.]
☐ \$500,001 to \$750,000 [6 pts.]

Please attach documentation of your previous two years gross sales receipts for the facility.

Include all motor fuel and non motor-fuel sales. If facility has no sales, use net operating revenue.

Total:

For DEQ Use Only
Applicant:
Date Rec'd:
A _____ pts
B _____ pts
Total: _____

SECTION E

TANK REPLACEMENT OR NEW TANK INSTALLATION:

This section must be completed if you are replacing your UST system or installing new tanks

- ☐ Removing Existing UST(s) ☐ Installing New UST(s)

SECTION F

INTEREST RATE SUBSIDY:

Do you wish to obtain an interest rate subsidy to provide a 7 1/2% loan for soil remediation upgrade and replacement?
☐ Yes ☐ No

Note: Subsidies will be given on a first come first serve basis until all available funds for such subsidies have been used. These subsidies are available to all applicants regardless of priority ranking and must be used within 180 days of issuance. Issuance of an interest rate subsidy and tax credit certificate does not obligate a commercial lending institution to make a 7 1/2 percent loan.

SECTION G

UST FINANCIAL RESPONSIBILITY INFORMATION:

Name of Insurance Company:

Policy Terms (please check those that apply):

Third-party Damage Limits: \$_____. Releases Cleanup Limits: \$_____. Policy Deductible \$_____.

Note: Your commercial lending institution may require a copy of your underground storage tank insurance policy or a binder from your insurance company. Attach a proof of financial responsibility before going to the lender.

SECTION H

I certify under penalty of law that the information I have provided in this application and all attached documents is true, accurate and complete.

Name and Title

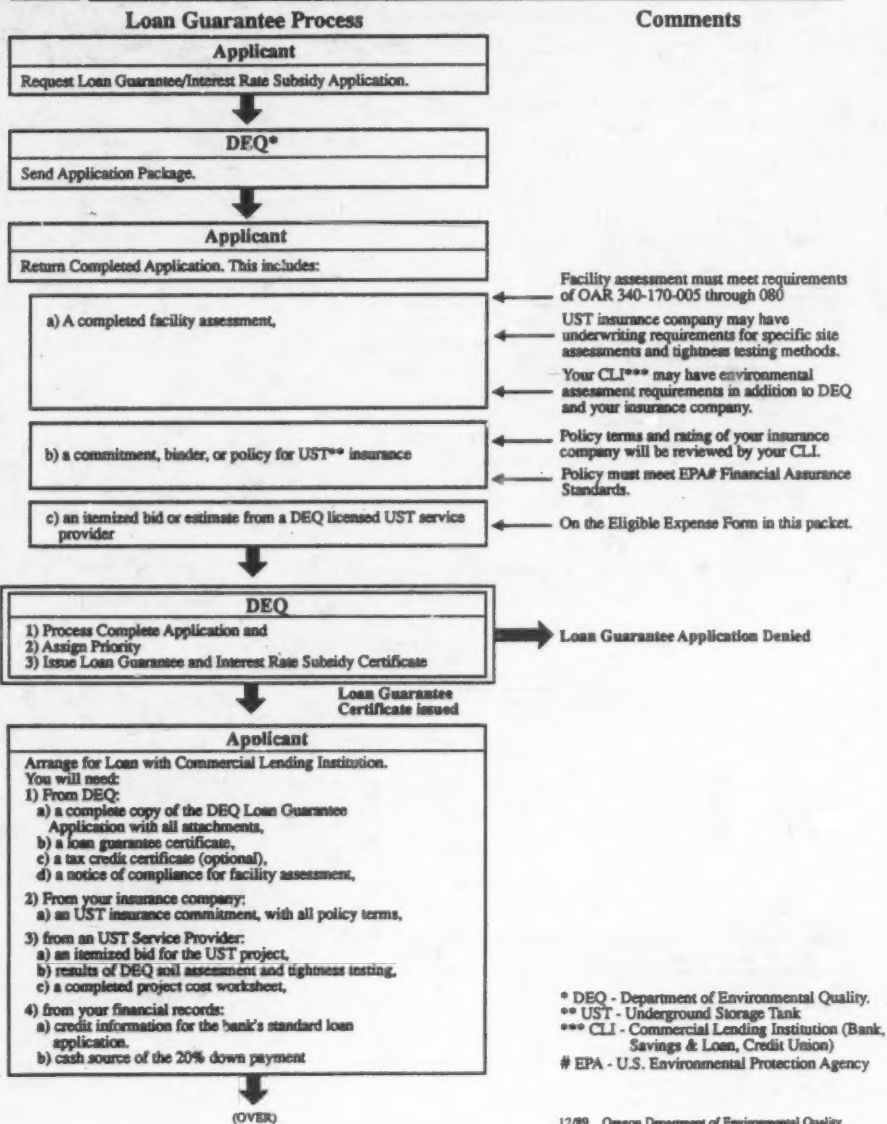
Signature

Date Signed

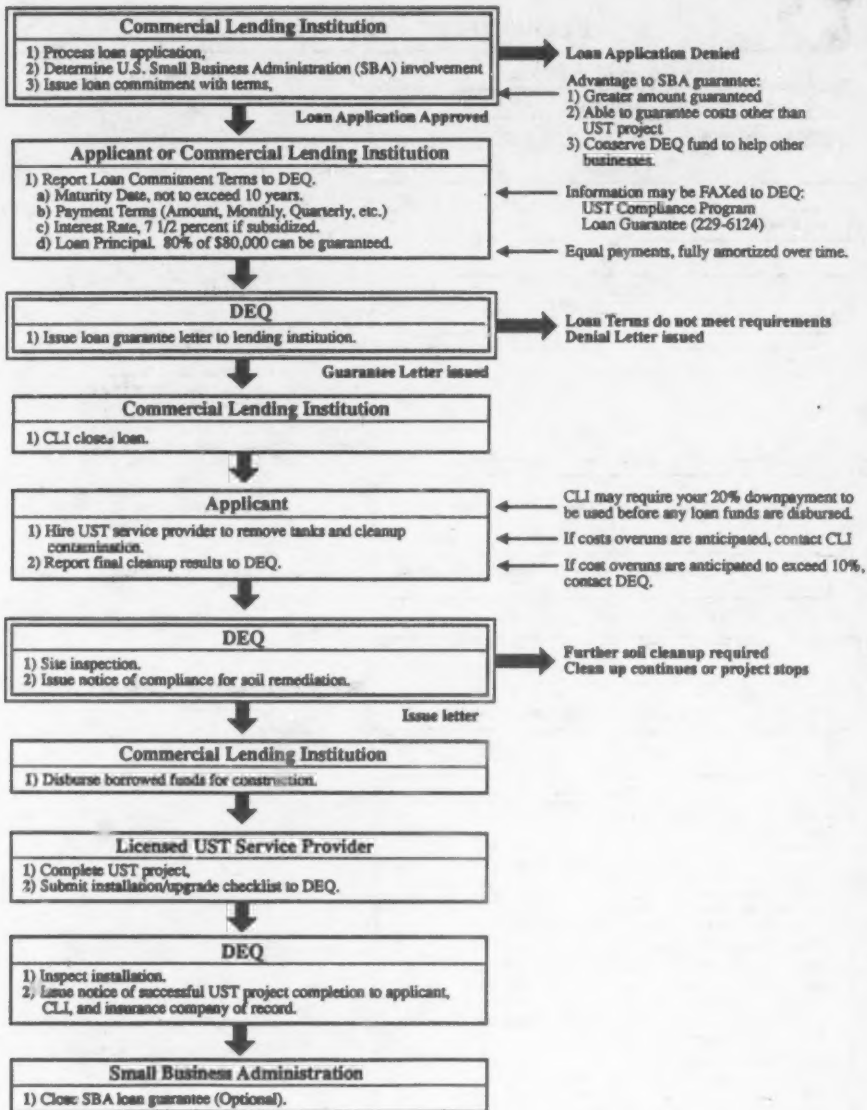
The Department of Environmental Quality shall have access to books, documents, papers and records held by the applicant which are directly pertinent to qualifying for the loan guarantee and the interest rate subsidy for the purposes of making audit, examination, excerpts, and transcripts.



FLOWCHART FOR APPLICANT



* DEQ - Department of Environmental Quality.
 ** UST - Underground Storage Tank
 *** CLI - Commercial Lending Institution (Bank, Savings & Loan, Credit Union)
 # EPA - U.S. Environmental Protection Agency



ATTACHMENT IV



UST LOAN GUARANTEES

October 1989

UST LOAN GUARANTEE PROGRAM

The 1989 Oregon Legislature passed a bill to help underground storage tank (UST) owners cope with the high costs of upgrading and replacing their tank systems and cleaning up leaks or spills involving minor soil contamination. Part of this new program includes a State guarantee for loans made by commercial lending institutions to tank owners for improvements to tank systems or for cleanup of minor contamination from tank leaks. Upgraded and replaced tank systems may be easier to insure for cleanup and third party damage costs. The program also may subsidize the loan interest rate to 7 1/2 percent.

LOAN GUARANTEES

Loan guarantees will be available for the cost of upgrading and replacing USTs, cleaning up soil contamination from leaks and spills, and the cost of installing Stage II vapor recovery equipment. The State of Oregon will guarantee up to 80 percent of the loan principal, not to exceed \$64,000. The loan applicant must make a down payment of 20 percent. Maximum term for the guaranteed loan is 10 years. Local lending institutions will use their business loan criteria to determine credit worthiness and ability to repay. DEQ will assess the application for compliance with the regulations and condition of the site. A priority

system will be used to evaluate all loan applications and higher priority will be given to those businesses that: 1) make motor fuel available to rural areas, 2) are small businesses, and 3) have a need for financial assistance. Loan guarantee applications will be accepted until August 31, 1992.

LOAN GUARANTEE ELIGIBILITY

All motor fuel facilities are eligible to receive a guaranteed loan. Preference will be given to those facilities: 1) with relatively low project costs, 2) in areas with few facilities, 3) in rural areas or small cities, 4) with low annual motor fuel throughput, and 5) that are small businesses. Only one loan guarantee may be issued for each facility. Facilities wishing to be considered for a loan guarantee must complete a facility assessment. (Please refer to the UST grant reimbursement rules, OAR 340-170-005 through 080, for facility assessment requirements.) Upon completion, applicants first apply to DEQ for approval of the project. Approved projects receive a certificate from DEQ, which the applicant takes to their local lending institution. The loan application is then reviewed and a guaranteed loan is approved on the basis of credit worthiness and ability to repay. The facility must also be operating in compliance with all DEQ regulations.



Oregon DEQ
UST Program
811 S.W. Sixth Avenue
Portland, OR 97204

BULK RATE
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT #452

INTEREST RATE SUBSIDY

Facilities that obtain a loan guarantee may also be given an interest rate subsidy. The interest rate charged to borrowers on a subsidized loan will be 7 1/2 percent. The difference between 7.5 percent and the normal interest rate for a similar loan will be paid to the lending institution by the State of Oregon in the form of an income tax credit. Owners or operators wishing to receive an interest rate subsidy must apply for an interest rate subsidy certificate. The certificate must be presented to the lending institution to receive the reduced interest rate. Money to pay for interest rate subsidies is limited and will be distributed on a first come, first served basis.

MORE INFORMATION

If you wish to receive an UST loan guarantee application, please fill out the attached card and return it to DEQ.

PUBLIC HEARINGS

Public hearings are scheduled to present the new UST financial assistance program temporary rules and receive comments from the regulated public. Final rules are slated for adoption in February 1990. All meetings are scheduled from 3:00 to 5:00 p.m.

Meeting locations are:

BEND
December 11, 1989
Cascade Natural Gas
334 N.E. Hawthorne

PENDLETON

December 12, 1989
Blue Mountain Community College
Room F12, Pioneer Hall
2411 N.W. Garden

PORTLAND

December 12, 1989
DEQ Headquarters
Fourth Floor
811 S.W. Sixth Avenue

MEDFORD

December 14, 1989
City Council Chambers
Medford City Hall

EUGENE

December 15, 1989
Lane Community College
Room 308, The Forum
4000 E. 30th Avenue

Written comments regarding the loan guarantee and interest rate subsidy rules may be mailed to DEQ and must be received before 5:00 p.m. December 15, 1989. Please mail your written comments to the address below.

Please contact DEQ's Underground Storage Tank Program if you have further questions.



DEQ
Underground Storage Tank Program
811 S.W. Sixth Avenue
Portland, OR 97204
(503) 229-5733
or toll free in Oregon 1-800-452-4011

Yes, I would like to receive an application for DEQ's new UST Loan Guarantee Program.

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

Return to:
Oregon Department of Environmental Quality
UST Loan Guarantee Program
811 S.W. Sixth Avenue
Portland, OR 97204



Florida Department of Environmental Regulation

Twin Towers Office Bldg. • 2600 Blair Stone Road • Tallahassee, Florida 32399-2400

Bob Martinez, Governor

Dale Trachtmann, Secretary

John Shearer, Assistant Secretary

S U M M A R Y

of Testimony Prepared for the
Subcommittee on Environmental Protection
February 20, 1990

Dirksen Senate Office Building
Washington D.C.

by

Marshall T. Mott-Smith, Administrator
Storage Tank Regulation Section
Division of Waste Management
State of Florida
Department of Environmental Regulation

The State of Florida has had a regulatory program for underground and aboveground storage tanks since 1983. It currently has a 50 million dollar trust fund that provides restoration monies for cleaning up petroleum contaminated sites and for compliance inspection contracts with local governments. The Florida Department of Environmental Regulation has been implementing a financial responsibility program for third-party liability and restoration since 1988 with the passage of the Florida Petroleum Liability Insurance and Restoration Program (FPLIRP). The Department has contracted with American International Group of New York, New York, as its carrier of third-party liability insurance for the FPLIRP. To be eligible for the program, facilities must be subject to and in compliance with Department rules and demonstrate financial responsibility. Eligible sites can receive up to one million dollars of free cleanup money from the trust fund. The program has been successful in providing relatively low-cost third-party coverage for petroleum marketers in a program that is designed to meet EPA financial responsibility requirements. The FPLIRP complements the existing compliance verification program which provides funds for county governments to perform annual compliance inspections of all facilities in their areas. Compliance rates have improved, which lowers premium rates for facility owner/operators.

Mr. Chairman. The Florida Department of Environmental Regulation appreciates the opportunity to testify before the Subcommittee on the important issue of financial responsibility requirements for petroleum underground storage tanks.

Florida relies on ground water for about 90% of its drinking water. In the early 1980s, several Florida cities lost their water supply wells because of contamination by leaking underground storage tanks. The state responded to this problem in 1983 when the Florida Legislature passed the Water Quality Assurance Act. This legislation gave the Florida Department of Environmental Regulation authority to adopt rules for underground and aboveground storage tanks containing petroleum products and other pollutants. In 1984, Florida became one of the first states in the union to pass comprehensive construction, registration, installation, maintenance and closure standards for stationary storage tanks. Many of these rules are more stringent than the new EPA Technical Standards. For example, Department rules required all facilities to install a leak detection system and provide overfill protection by December 31, 1989. All facility owners with pre-1970 tanks must also have replaced or lined their tanks by the end of 1989.

Between 1984 and 1986, the number of leaking tanks discovered by the implementation of the storage tank program increased significantly (to approximately 700 sites in July, 1986). Field

enforcement and cleanup activities associated with these contaminated sites were hindered by the inability of many owners to pay for the cleanup and by legal delays from owners who were able. Subsequently, in 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (the SUPER Act). This landmark act established major cleanup and preventative programs and created a \$50 million-per-year trust fund (the Inland Protection Trust Fund) to pay for the restoration of contaminated sites. The fund is supported by a .20¢ per barrel tax on petroleum products produced in and imported into the State, and by tank registration fees.

An "amnesty" program for contaminated sites was one of the most important portions of the Act. As long as site access was not denied and there was no gross negligence, owners and operators with leaking storage tank systems could apply for and receive up to one million dollars per site of restoration funding. Owners and operators had the choice of turning the restoration over to the State as part of the Early Detection Incentive Program, or cleaning up the contamination themselves (according to stringent State ground water restoration standards) and being reimbursed later for their expenses. Contaminated sites were ranked according to their potential for causing environmental damage or for public health and safety considerations. Funding levels were initially based on projections of 2,000 applications, but when the program was extended twice during the 1987 and 1988

legislative sessions, the final number of applications received by December 31, 1988 was 9,394. There are currently about 80,000 tanks at approximately 29,000 facilities in the State, so almost one third of all eligible facilities applied.

After the EPA proposed its underground storage tank financial responsibility regulations in 1987, the 1988 Legislature passed the Florida Petroleum Liability Insurance Program (FPLIP). The program was amended in 1989 and renamed the Florida Petroleum Liability Insurance and Restoration Program (FPLIRP). The FPLIRP was sponsored by the Florida Petroleum Marketers Association as a way of providing relatively low cost, third-party liability insurance to facility owners and operators in the state. Participation in the FPLIRP enables eligible facilities to receive up to one million dollars of free restoration coverage from the Inland Protection Trust Fund. The program is optional and is open to all facilities that are subject to and in compliance with Department rules. Facilities must demonstrate financial responsibility by using one of the EPA financial responsibility mechanisms (such as a surety bond, letter of credit, etc.) by purchasing insurance from the Department's contracted third-party liability insurance program carrier, or by self insuring.

The FPLIRP allows the Department to self-administer or contract out the third-party liability insurance program. The Department decided that a contract with a private insurance carrier that was

willing to bear the risk was the most appropriate way for the State to meet its statutory obligations. A request for qualifications/proposal for a property and casualty insurance company admitted in the State of Florida to service and assume the liability under the FPLIP was solicited in August 1988. The outcome of this competitive process resulted in the selection of American International Group, Inc. of New York, in October 1988.

AIG is a large, A+ rated multi-national insurance company with sufficient assets to bear all risks in underwriting coverage under the FPLIRP. Under the Department's contract with AIG's member companies, the American Home Assurance Company and the National Union Fire Insurance Company of Pittsburgh, Pennsylvania, policies and rates were filed with Florida's Department of Insurance for approval. The policy was developed in accordance with EPA financial responsibility regulations as well as state insurance rules. The rate approval by the Department of Insurance in March, 1989 specified a range of premiums from \$300 to \$1,200 per tank per year, with an average rate of \$725. Compensation for AIG under the contract is almost entirely derived from premiums from the third-party liability policies.

AIG has a contract with FPLIPA, Inc. (Florida Petroleum Liability Insurance Program Administrators) of Cocoa, Florida, to manage many of its contractual responsibilities. FPLIPA began marketing the insurance to all registered facilities in the State in March

of 1989. At present, FPLIPA has offered quotes to 4,438 facilities with a total of 14,331 tanks. As of February 15, 1990, there are 2,362 facilities with 7,594 tanks insured by AIG through FPLIPA's efforts. The average premium has dropped from \$725 per tank to approximately \$533 per tank. The average renewal premiums for previously insured storage tanks is \$350.00 per tank.

Major oil companies complying with EPA's regulations had to demonstrate financial responsibility on January 26, 1988, and most did so by demonstrating net worth using the EPA's financial test. By self-insuring with this EPA financial responsibility method, most of the major oil companies applied and became eligible for the FPLIRP. Major oil companies own approximately 5% of all retail facilities in the State. The percentages of ownership of all open and closed registered facilities are: retailers 34%, non-retailers 45%, local government 7%, state government 2%, federal government 1% and other 6%.

Hundreds of retail facilities and many other types of facilities have purchased coverage from the State's contracted insurance carrier. However, facilities can also purchase insurance from other insurance carriers provided that their policies meet the EPA financial responsibility requirements. This qualifies as self-insurance under the Department's insurance rules and provides FPLIRP coverage for eligible owner/operators. The

policies of eighteen different companies (including risk retention groups) have been submitted by more than 100 FPLIRP applicants as proof of self insurance.

To demonstrate proof of compliance, facility owners and operators must submit a notarized affidavit stating that they have read and are familiar with the Department's storage tank rules and that their facilities are in compliance. An inspection is not required prior to inclusion in the program. However, except for minor "paper violations", coverage can be cancelled if an inspected facility is determined to be out of compliance with Department rules. Facilities receive a Notice of Eligibility from the Department as proof of eligibility. There is a minimum \$500 deductible for third-party liability coverage and for restoration coverage.

Facility compliance is one of the most important aspects of the program. Federal financial responsibility regulations increase facility compliance with the State's technical regulations that are designed to prevent future ground water contamination. Frequent compliance inspections verify FPLIRP eligibility, increase compliance, and enhance public awareness of Department rules. Because of the large number of facilities in the State, the legislature gave the Department authority to contract with local governments to perform compliance inspections for the

Department. Money for this compliance verification program is provided from the Department's Inland Protection Trust Fund.

Contracting with Local Governments has been one of the big success stories for the Department. The Compliance Verification Program's first contracts were signed in June 1988. Since then, over 24 of 67 counties have participated in the program, and plans are in action to contract with the balance within the next year. Most of the current contracts are with the major urban counties representing approximately two thirds of the State's storage tank inventory. These one-year, renewable contracts require local governments to perform annual compliance inspections of all facilities within the county, inspect all new installation and tank removals, perform FPLIRP eligibility inspections, and carry out all enforcement activities as needed. Since the program began, more than 16,000 inspections have been completed. Some counties in the second year of their contracts have observed a significant increase in compliance rates - from 5% to 45% (see attachment). Most of the minor violations are inventory, recordkeeping or notification related and account for 70% of the observed violations.

Although the State's statutes require facility owners of storage tank systems to demonstrate financial responsibility, the Department plans to obtain EPA program consistency in its rule revisions by adopting the federal financial responsibility requirements by reference sometime during the summer of 1990.

This will enable the Department to enforce EPA's rule and not have to rely on EPA Region IV for administrative or judicial enforcement assistance. The Department has also submitted its FPLIRP program to EPA for approval as a State financial responsibility program.

There have been problems with program implementation during the last several years. The Department has received criticism for its delays in the restoration program. However, these can be largely attributed to the unexpected volume of applications received, a bid protest connected with the selection of State cleanup contractors, hiring delays and vacancies, and incomplete submittals of contamination assessment reports and requests for reimbursement by consultants and owner/operators. Most of the problems have been resolved and the restoration program is operating at a steady pace. Also, the 1989 legislature provided an incentive for faster cleanup of sites by changing the reimbursement program to a first-come, first-serve basis. This is an important change because new contaminated sites are continually reported to the Department. Over 800 new discharges have been reported since January 1, 1989.

The 1988 FPLIP legislation caused problems with sites in the amnesty program that had pre-existing contamination. The FPLIP excluded these sites which comprised about 1/3 of the total facilities in the State. Also, insurance carriers usually do not

cover sites with pre-existing conditions. The 1989 FPLIRP legislative revisions provided restoration eligibility for these sites and the Department's insurance carrier now covers the third-party liability for "amnesty" facilities on a go-forward basis, excluding coverage for "pre-existing" conditions.

Many of the smaller marketers with low through-puts of product have expressed their inability to comply with the federal financial responsibility standards and say that it will cause them to go out of business. Without minimizing their plight, these are the same facilities that are unable to pay for the upgrading of their storage tank systems to meet state monitoring system, overfill protection and tank upgrade requirements. In Florida, the average marketer should be able to purchase insurance from the State's carrier or from any number of private carriers actively marketing third-party insurance in the State. Increased competition and improved facility compliance and system upgrading has significantly reduced the average premium costs.

The Department of Environmental Regulation is succeeding in making its financial responsibility, restoration, and preventative programs work. We are pleased with American International Group's contract performance and their ability to provide strong risk management and rapid restoration response to their insureds. There have been no third-party claims on the FPLIRP to date. We have received excellent technical assistance

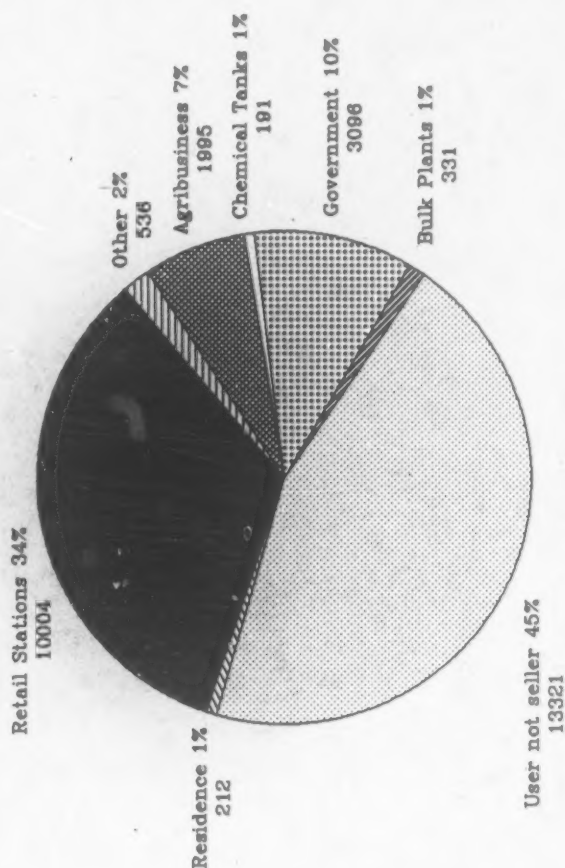
from our insurance consultant, Environmental Insurance Management, Inc. of McLean, Virginia. The Department's nine contractors for state-funded cleanups are all actively involved in restoration work at contaminated sites.

Our existing rules are helping us carry out the intent of the 1983 legislative session. More than 95% of all facilities are registered. It is unlawful for distributors to fill tanks that are not registered. New storage tank systems are non-corrosive and are being installed by State-certified installers. Old systems are being upgraded, and old tanks are being removed by certified removers. More than 24,000 underground storage tanks have been removed since 1984. As a result of our compliance verification program contracting with local governments, we hope that all 80,000 registered tanks will be inspected annually by this time next year.

Department plans include revisions to our 1984 rules that will enable the Department to obtain consistency with EPA Technical Standards. Because of the State's dependence on ground water, the Department is proposing more stringent regulations (double wall systems) for piping statewide and for new tanks within specific setback distances from public and private wells. The rules should be substantially equivalent to EPA's for most other requirements. A public rule adoption hearing is scheduled for March 14, 1990 before the State's Environmental Regulation Commission.

In conclusion, the Florida Legislature demonstrated its support for small businesses and for cleaning up petroleum contaminated ground water by establishing a large State trust fund for restoration and creating a financial responsibility program that is available to most of the petroleum marketers and non-retailers in the State. We strongly urge EPA to continue its enforcement of the RCRA Subtitle I Financial Responsibility requirements passed by Congress.

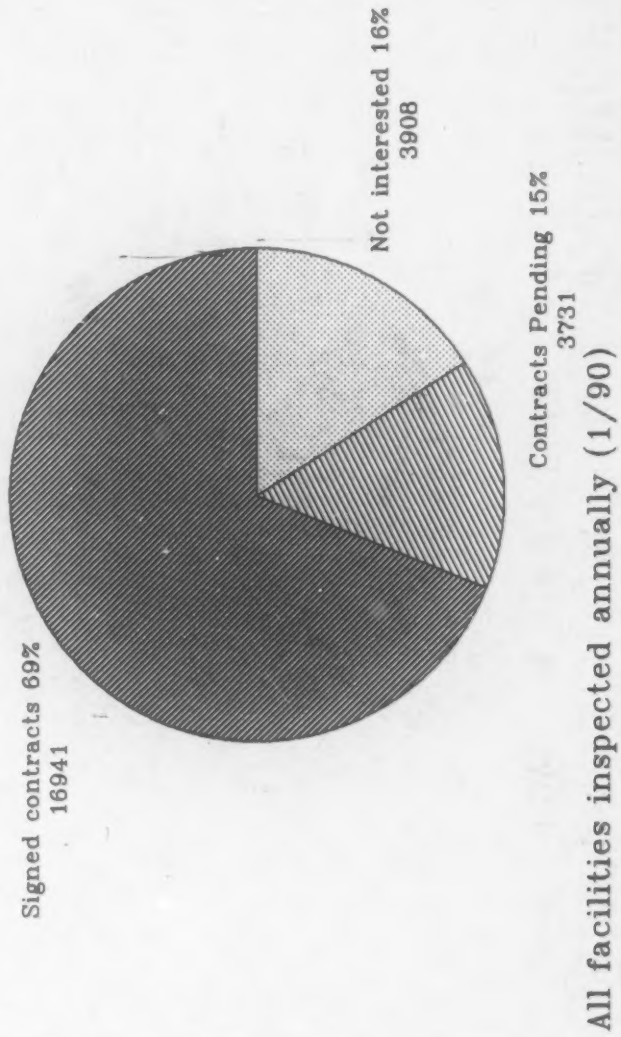
TYPES OF STORAGE TANK FACILITIES Registered with FDER in Florida



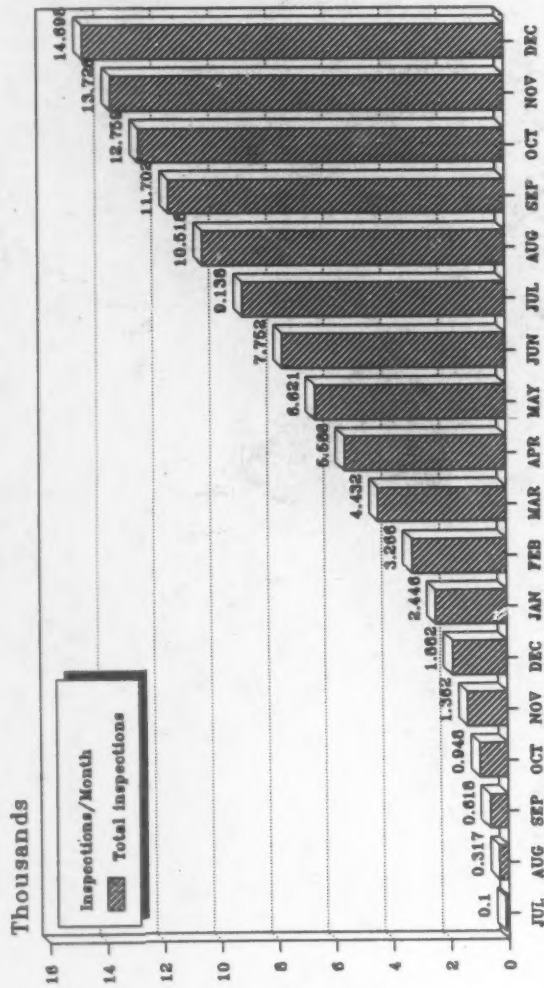
29,686 Active Facilities Statewide

(December 1989)

Storage Tank Compliance Contracts
Facilities to be Inspected
By Local Programs

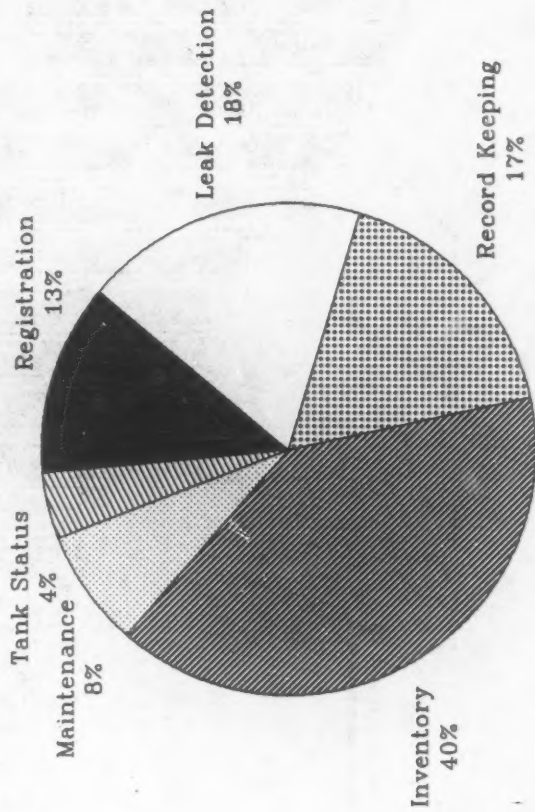


Florida's Storage Tank Compliance Cumulative Inspections, since July 1988 14,698 Total



(Counties=13,048) + (Districts=1,650)

Storage Tank Compliance Statistics
Statewide from 01/01/86 to 01/01/90

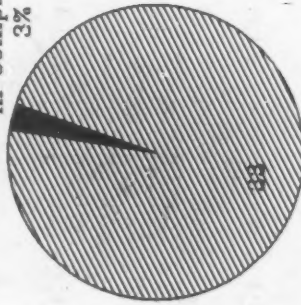


(Total out of 14,698 violations)
Facility Inspections as of 01/01/90

Storage Tank Program Compliance Rates Lake County, Florida

September 1988 September 1989

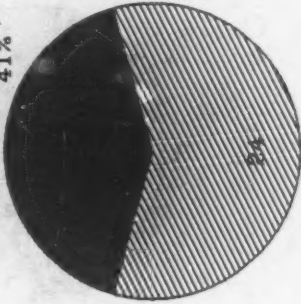
In Compliance
3%



Out of Compliance
97%

(34 inspections)

In Compliance
41%

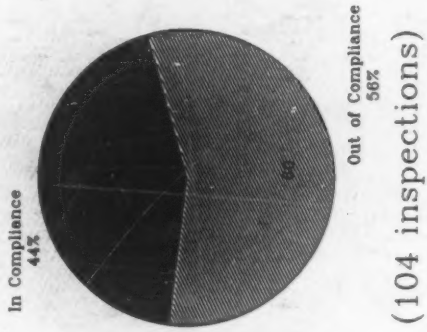
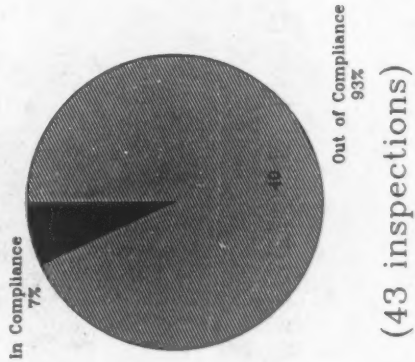


Out of Compliance
59%

(41 inspections)

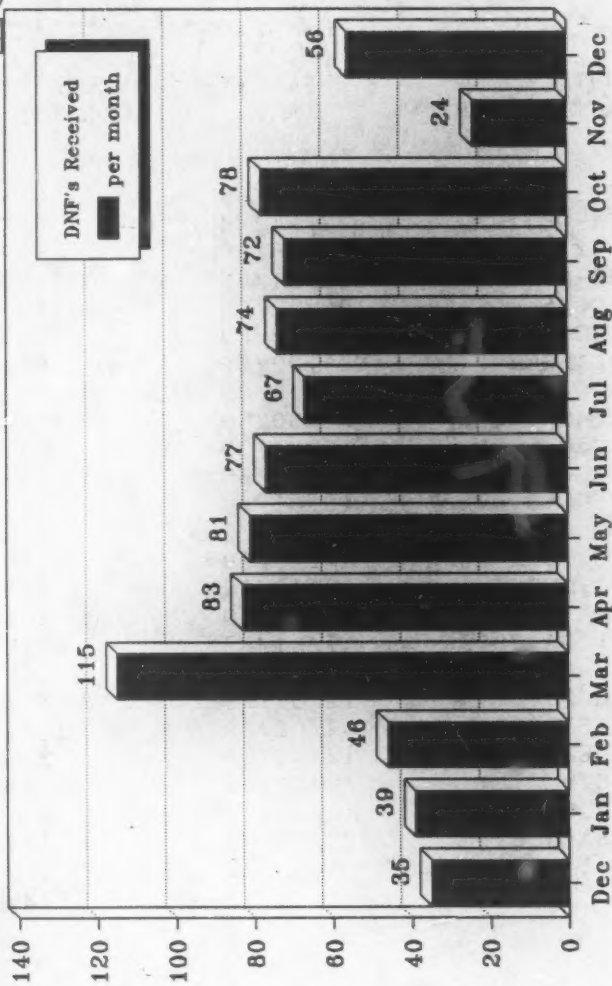
Storage Tank Program Compliance Rates
Palm Beach County, Florida

September 1988 September 1989



Florida's Discharge Notifications

847 Received since January 1989



(based on date of discharge not receipt)

Page No. 1
02/15/90

STORAGE TANK COMPLIANCE VERIFICATION
LOCAL PROGRAM CONTRACTS TRACKING

COUNTY & CONTRACT NUMBER	EFFECTIVE DATE	NUMBER OF FACILITIES	CONTRACT AMOUNT	
BREVARD-GC30	11/17/88	678	126479	1
VOLUSIA-GC37	12/15/88	659	95171	1
LEE-GC42	01/16/89	632	104796	1
BROWARD-GC22	02/01/89	1476	207816	1
DUVAL-GC36	02/22/89	1490	247152	1
LAKE-GC20A	07/02/89	461	131673	1
ESCAMBIA-GC24	07/02/89	684	150793	1
DADE-GC54	09/30/89	1741	294592	1
PALM BEACH-GC75	09/30/89	1189	322362	1
LEON-GC50	10/01/89	359	85093	1
CITRUS-GC51	10/01/89	192	42368	1
MARION-GC53	10/01/89	571	138493	1
COLLIER-GC58	10/01/89	328	86628	1
HILLSBOROUGH-GC23	10/13/89	1544	317198	1
ALACHUA-GC73	10/18/89	335	137373	1
SARASOTA-GC57	11/01/89	401	89734	1
SANTA ROSA-GC79	11/01/89	212	57547	1
MANATEE-GC55	12/01/89	395	93064	1
PASCO-GC78	12/01/89	513	107436	1
PINELLAS-GC72	12/01/89	1191	286806	1
IND. RIVER-GC77	12/01/89	215	50211	1
POLK-GC78	12/01/89	1363	298298	1
MARTIN-GC80	12/01/89	312	71950	1
OKALOOSA-GC82	02/01/90	384	78571	1
*** Total ***		17325	3621604	24



National
League
of
Cities

1301 Pennsylvania Avenue NW
Washington, D.C.
20004
(202) 626-3000
Fax: (202) 626-3043

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STATEMENT OF THE HONORABLE SALVATORE J. PANTO, JR.

MAYOR
EASTON, PENNSYLVANIA

on behalf of
THE NATIONAL LEAGUE OF CITIES

on the
UNDERGROUND STORAGE TANK PROGRAM

before the
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION
ENVIRONMENT AND PUBLIC WORKS COMMITTEE
UNITED STATES SENATE

February 20, 1990

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Mr. Chairman, members of the Subcommittee: I am Salvatore Panto, Mayor of Easton, Pennsylvania. I am a member of the National League of Cities' Energy, Environment and Natural Resources Steering Committee and immediate past president of the Pennsylvania League of Cities.

I am here today to testify on behalf of NLC and the 16,000 cities and towns across the nation we represent on financial responsibility requirements for municipally-owned underground storage tanks.

First, I'd like to provide some background on the issue from our perspective.

When Congress enacted the underground storage tank provisions, it was our perception that local governments were to be treated identically to states and the federal government. In our comments to EPA, a copy of which has been submitted to you, we specifically asked for an exemption. Unfortunately, EPA denied us that request. We have not abandoned our position on an exemption and would certainly be interested in seeing legislation that clarified that indeed Congress did not intend for municipalities to have to meet the financial assurance requirements.

Let me make clear, that NLC is not suggesting that municipalities be exempt from liability; we are only saying that because of our status as governments, we should not be forced into a virtually nonexistent insurance market, when there are so many others who really should provide some assurance that they can deal effectively and appropriately with contamination from leaking undergrounds storage tanks.

We believe it would be far better public policy to encourage municipalities to expedite replacement of antiquated, inadequate tanks rather than mandating they spend scarce local resources on

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meeting the financial assurance requirements, an assurance that municipalities by their very nature will implement anyway in the exercise of their responsibility to protect public health.

We would like to discuss several issues with respect to the financial responsibility requirements:

1. An exemption for municipalities from the financial responsibility requirements;
2. Compliance with the law's requirements by the nation's smaller cities and towns; and
3. The ability of local governments to comply with EPA's requirements.

1. We believe municipalities, like the states and federal government, should be exempt from the financial responsibility requirements.

As we stated in our comments to EPA, we believe cities and towns meet the same two criteria the agency used to justify an exemption for our sister governments.

First, municipalities certainly exist to "safeguard the health and welfare" of the public and therefore have an incentive to respond promptly to any leak. City governments are almost always the first to be contacted and the first to respond to local emergencies. In this respect, cities are actually more directly accountable to the people than are states. Concerned citizens are far more likely to call city hall than they are to call the governor's office when there is a crisis or a problem.

EPA's second justification for the state/federal exemption was their financial stability. Like Cicero, I will forswear pointing out that one of these levels of government is facing an unprecedented deficit in the hundreds of billions of dollars and seems unable to come to grips with dealing effectively with its financial difficulties.

Cities, on the other hand, are, for the most part, prohibited from deficit spending. It is also a typical local government practice to budget contingency funds which they use to

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respond to foreseeable, but unplanned emergencies of manageable proportions. For those underground storage tank leaks which require new revenues to be generated, cities, like states, have the ability to tax, borrow and issue bonds. The ability to borrow means that even the most costly leaks will be manageable.

Creditors are almost always willing to lend to cities because they are responsible institutions financially and fiscally.

Cities almost never go out of existence and neither do their debts. Even when cities do file for bankruptcy, their debts are not forgiven. Chapter 9, the portion of the Bankruptcy Code applicable to cities, is designed as a means for cities to restructure their debts, not to extinguish them, and to ensure continued access to the credit market. A city's liability will always remain.

2. We believe the preponderance of small communities in the nation can deal adequately with their underground storage tanks.

In discussions with NLC, EPA raised concerns about the ability of the smallest communities in the nation to afford the costs of cleanup of a tank leak.

In preparing our comments for the Agency, NLC informally surveyed cities requesting information on the number of tanks owned by municipalities, whether cities carried liability insurance to cover leaks from underground tanks, and whether any of the cities had ever had a leak in one of their tanks. Of the 217 municipalities responding to the survey 98 had populations under 2,500; 186 respondents had populations under 25,000.

The responses indicated that there is a correlation between city size and the number of tanks a city owns -- that is, the smaller the city, the smaller the number of tanks. The average number of tanks in cities under 2,000 population is one; for cities between 2,500 and 5,000 population, the average number of tanks is 3; cities between 5,000 and 25,000 average 5 tanks. Cities not owning tanks ranged in population from 84 to 3,500.

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Only 2½ of the cities (4 cities) responding to the survey claimed to have pollution liability insurance in the event of a leak.

Finally, the survey revealed that only 7½ (or 16) of the cities had actually experienced leaks from municipal tanks. Of these, 13 were interviewed by telephone about their experiences. In general, the cities were able to finance their responses readily from available revenues or fund-raising authorities; the cities responded within reasonable -- sometimes exemplary -- periods of time; and took prompt action to ensure that leaks do not recur in the future, either by upgrading or removing failed tanks.

In Easton, we have recently expended more than \$70,000 to clean, divert, collect and properly discard #2 fuel oil which was leaking into the Bushkill Creek from city-owned property, even though we proved beyond a reasonable doubt that the fuel oil was not coming from our tanks.

In more recent discussions with some smaller communities, we have learned that they have initiated a variety of efforts to come into compliance with the law's requirements. Some have removed their municipally-owned underground tanks and opted to purchase gasoline from local commercial establishments; others have moved to replace their existing tanks with tanks that meet the law's new standards.

In my city, we have removed six underground storage tanks; five are scheduled for removal this year, one will be replaced with an above-ground tank; and five will remain in operation. These five tanks have been, and will continue to undergo hydrostatic tests and pressure tests of the tanks and lines.

3. While we believe it important to commend EPA for recognizing that municipalities could not qualify under the self-insurance criteria they developed for private sector tank owners and for attempting to draft alternative criteria for municipalities, we are concerned about whether municipalities

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will be able to comply with EPA's financial responsibility requirements.

Our response is that we certainly hope so. Municipalities, as a matter of course, make every good faith effort to be in compliance with federal requirements.

But until we see the scheme EPA develops for municipalities to meet the financial assurance requirements, we cannot answer the question. Certainly, the agency has been interested in and solicited NLC's views about what can and will work for local governments. Whether these views will be adequately addressed in the agency's final recommendations is not yet known.

We have expressed our concerns to EPA about the October 1990 compliance deadline for municipalities given the absence of any proposal municipalities can prepare to implement and given the timeframe EPA said it would need to establish appropriate rules applicable to cities and towns.

We believe municipalities should be given a minimum of 18 months from promulgation of the final rules to come into compliance. Since the financial assurance requirements will in all probability involve budgetary issues, cities and towns will need at least that much time to plan and implement such a program.

We have also suggested to EPA that it would be wise policy to have cities and towns focus on replacing tanks that don't meet the new technical standards, rather than spending their scarce resources on financial assurances that we believe are unnecessary.

Other alternatives to self-insurance, such as environmental impairment liability insurance, if it is available at all, is extraordinarily expensive. If municipalities are going to be able to comply with financial responsibility requirements, we believe some form of self-insurance or participation in state-authorized trust funds will, in all probability be the only options.

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Our ability to self-insure was suspended by a provision in last year's reconciliation legislation. We have been working with the IRS, Treasury, Senate Finance and House Ways and Means Committee staff to attempt to preserve access to self-insurance.

Finally I would like to discuss briefly why NLC filed suit against EPA on the financial responsibility requirements.

When the agency issued its financial responsibility requirements in 1988, it recognized that the self-insurance criteria it had set up for the private sector were not appropriate for municipalities. EPA stated that while municipalities would have to be in compliance with financial responsibility requirements by October of 1990, it had not yet written what these requirements would be.

There are two major reasons why NLC, on behalf of the nation's cities and towns felt it necessary to preserve our options and file suit:

- The deadline for compliance with as yet unknown requirements is totally unrealistic especially in light of the agency staff's indication in late 1988 that it would take them twenty months to write the requirements applicable to municipalities. We are now less than nine months from the compliance date and have yet to see proposed requirements on financial responsibility. We still don't expect to see final requirements much before June, leaving municipalities only four months to come into compliance before facing civil penalties -- a position we consider totally untenable.

- Since we have not seen what the agency will propose vis-a-vis cities and towns, and, therefore, have no idea as to whether the proposal will be feasible or realistic, we believed it necessary to preserve our option to sue should the requirements be unworkable.

The deadline for filing suit was January of 1989. Failure to file suit by that deadline would have precluded our ability to take any action against the agency should that prove necessary.

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We would have lost our right to object to regulations that didn't exist.

I also want to add that the briefing schedule has been postponed at the joint request of NLC and EPA. It is our hope that our joint efforts in working cooperatively with the agency will result in realistic, workable requirements for our nation's cities and towns.

On behalf of the National League of Cities, I would like to express my appreciation for the opportunity to present our views on these important issues. I would be happy to respond to any questions you may have.

**Testimony of Candace Chase Mills
Mills Repair
Belgrade, Montana**

before the

**Subcommittee on Environmental Protection
Senate Committee on Environment and Public Works**

February 20, 1990

Mr. Chairman, members of the committee: I appreciate your concern over the effects of the Underground Storage Tank regulations on small businesses, and thank you for the opportunity to testify. I am not here representing any particular group, however, in a sense I do represent more than half of the nation's small firm motor fuel outlets, which have been served a death sentence by these regulations.

Pursuant to Section 9003 of the Resource Conservation and Recovery Act, the EPA established regulations for both technical and financial responsibility requirements for Underground Storage Tank systems (USTs) containing petroleum or other regulated substances, which regulations became effective in 1988. In its Regulatory Impact Analysis for the financial responsibility requirements, the EPA concluded that "this regulation may have a significant economic impact on some small businesses."¹

The projected impact in the retail motor fuel marketing sector is that through year 5, if both the technical and financial responsibility requirements are imposed, and if all small firms can obtain insurance, 55% of existing small firm outlets will survive. The EPA goes on to project that, under the same circumstances, by year 15, 47% will survive.² This portion of the nation's service stations deserves to be classified as more than "some small businesses".

While the purpose of the statute underlying these regulations can hardly be questioned, the method of

¹Federal Register, Part II EPA 40 CFR Parts 280 and 281, Oct. 26, 1988. (Financial Responsibility Requirements) P. 43370

²Federal Register, Part II EPA 40 CFR Parts 280 and 281, Oct. 26, 1988. (Financial Responsibility Requirements) P. 43370

implementation must be addressed. This is a case in which the ends do not justify the means. It is vital that we find ways to achieve the same ends without wiping out half of an industry.

My husband and I own a branded service station with auto repair facilities, which we have operated for ten years in a small western Montana town. Our property is the home of 5 of the 1.7 million USTs in the nation, and ours is one of the 193,000 retail motor fuel outlets in America. We believe we are one of the service stations that will not survive the first 5 years of these regulations.

I have been asked to address some of the specific problems facing small businesses in complying with these regulations. The EPA defines small businesses in the motor fuel marketing sector as having less than \$4.6 million in annual sales and as typically having \$500,000 in assets.³ By the definition of small, my business is microscopic.

I understand that Congress is used to considering costs in terms of billions of dollars, but I ask that you alter your scope to focus in on a business that operates only in the thousands. We operate on an annual dollar volume of less than \$200,000. Our net income in 1989 before taxes and loan principal reduction was \$24,000, of which nearly 30% is attributed to gasoline island sales. We have \$112,000 in assets, and \$124,000 in liabilities. I include these figures to make two points clear; first, that we are interested in saving a business in which we make a living, not a killing; and second, that we don't have a whole lot of money with which to fool around. Our situation provides a good example of just how it is that 53% of this country's small service

³Federal Register, Part II EPA 40 CFR Parts 280 and 281, Sept. 23, 1988. (Technical Requirements) P. 37193

stations will go out of business as a direct result of these regulations.

Problems Associated With Compliance

I have not studied the financial responsibility requirements in great detail, and I leave it to others to elaborate on the problems with them and seek solutions.

Technical requirements that must be met are very complex and include requirements for corrosion protection, spill and overfill protection, leak detection for tanks, leak detection for piping, and upgrading or replacement of the tanks and piping. All Underground Storage Tank systems (USTs) in the country are required to be upgraded or replaced by December, 1998.

In addition, existing systems must install leak detection before that date in accordance with a five year phase-in schedule that targets older, bare steel or unprotected systems for earlier leak detection. The main focus of my testimony will be this aspect of the regulations.

Many stations are choosing to upgrade or replace the systems now to avoid some of the costs of interim leak detection. A major drawback to this is that the government is looking into the possibility of requiring use of alternative fuels. Methanol, which is under serious consideration, requires a different tank structure than does gasoline. If methanol becomes a primary fuel for the motoring public, outlets upgrading or installing new USTs now may find themselves replacing them again before the turn of the century.

The fact that Congress may mandate a major change in the motor fuel industry adds to the substantial investment risk of replacing the USTs at this time. We determined that our

business could not sell enough product to justify the expense of installing a new UST system now. We sought the form of leak detection that was most affordable and effective for our situation, with hopes that conditions would be favorable for replacing the system before 1998.

There are so many options available for leak detection that it would seem one would be able to find a method that suited one's situation. However as I researched the options, I found each had drawbacks significant enough to eliminate it as a viable option for my business.

Leak detection may be performed either through use of monthly monitoring systems or inventory control. —

Monthly Monitoring Systems

Monthly Monitoring systems fall into two categories; external and internal monitors. External monitors include interstitial, liquid, and vapor monitoring systems.

Interstitial monitors are placed between the UST and a second barrier. This option was not available to us at this time as we have no second barrier surrounding our tanks.

Liquid and vapor monitors are placed in wells drilled at strategic locations in the tank site, and can be manually operated or automatic, computerized systems. The costs can range from a few hundred dollars to over \$14,000.

Liquid monitors look for free product in the ground water table. Because of the need to detect releases within a short period after their occurrence, restrictions apply to the conditions for use. Our site does not meet the requirements for proximity to the water table, so we eliminated this option.

Vapor monitors look for product vapors in the area immediately surrounding the tanks. It is generally accepted that vapor monitors will pick up a reading when initially installed, and this reading is considered a "background" level of contamination, which could have been caused by a number of factors in the history of the site. Analysis of the monthly readings takes into consideration the background contamination, but the quality of the readings may be affected by it.

Because there is no way of knowing for certain what the cause of the background contamination is, it would be wise to conduct a tank tightness test before installing a vapor monitoring system, to confirm the integrity of the tanks.

A slim possibility exists that given the right conditions of location, soil, and flow patterns of underground liquids, a vapor monitor could pick up readings from product leaked at neighboring sites.

The efficacy of vapor monitors depends partly on the type of backfill used in the UST site. This presented a dilemma for us, because our tanks were installed in the 1950s, we believe by Texaco, and we have no idea what the backfill is. Nor do we know the dimension of our UST system, or what the excavation zone is, which would be needed to determine the location for wells. The EPA recognizes this is not an uncommon problem for UST owners.⁴ After an intensive search for anyone who might possibly have knowledge about the installation of our tanks, and numerous phone calls to agencies that might have records, we found that costly excavation would be the only means of gathering this information.

⁴Federal Register, Part II EPA 40 CFR Parts 280 and 281, Sept. 23, 1988. (Technical Requirements) P. 37163

With these concerns in mind, we put this option on hold to investigate internal monitoring systems.

Internal monitors consist of Automatic Tank Gauging Systems, or ATGS, which are placed within the tank itself to accurately measure the level of product. The EPA requires that inventory control be used in conjunction with ATGS. Prices for this type of equipment start near \$2500 for the less sophisticated models and go up, with the average cost being about \$4,000. Because of the higher investment in this type of system, wisdom again dictates that a tightness test be performed before installing a system. This type of system is not recommended for our situation because of the age of the tanks and the fact that we would need to remove them soon for upgrades or replacement.

Inventory Control

Inventory control is a method of leak detection that may only be used until 1998, and tank tightness testing must be performed in conjunction with it. (There is an exception for tanks under 550 gallons, such as those used for used oil storage, which may use inventory control without tightness tests.) Most service stations already gather the information necessary for inventory control. In this method, product levels in the tanks are measured by stick readings and reconciled daily with the throughput of the pumps. The information is put through a rigorous evaluation on a monthly basis, with several conditions monitored for indications of a leak. These conditions are the same for all tanks, yet tanks with corrosion protection and those less than 10 years old need only be tested every five years, while older, unprotected tanks must be tested annually.

This option appears promising until the tightness testing procedure is investigated.

There are at least twelve types of test procedures available in Montana. The government does not license or endorse any company or method.

Of our five tanks, two are of 500 gallon capacity, thus exempting them from the need for tightness tests. The cost for tightness tests on the three other tanks begins between \$1000 and \$1500, depending on travel distance for the testing firm and various other factors. It is impossible to get a firm estimate on the total cost of testing because every situation is different, and once the tests are begun there are variables that could lead to further procedures which are charged either on a unit basis or by the hour.

If a leak is indicated, excavation may be required to isolate the location of the leak. The cost can then skyrocket; it may turn out that the tanks have to be removed, bringing our total costs to as much as \$25,000. While it is possible to make a plan for paying for a \$1200 test, it is not feasible to plan for paying an undeterminable amount.

A prohibitive angle to this option is that with most testing systems, the tanks must be full in order to conduct a tightness test. There is one company out of the dozen in my state that requires the tanks be only 60 to 90 % full, others require them to be filled to capacity.

We have three 4000 gallon gasoline storage tanks, which are usually filled from the minimum pump level with one week's inventory, since gas prices are given to dramatic fluctuations. This is not an unusual practice for service stations, as the EPA recognized in its decision to remove from the final rule the requirement that tanks be 80% full during the monthly testing with ATGS.⁵

⁵Federal Register, Part II EPA 40 CFR Parts 280 and 281, Sept. 23, 1988. (Technical Requirements) P. 37161

In our case, this means each tank contains a maximum of 1,000 gallons, usually less. In order to fill the tanks we would need to purchase 11,000 gallons of gas, or 10,000 gallons more than we usually do. This would cost between \$10,000 and \$12,000, depending on the wholesale price of gas on the date of purchase.

This is three months' inventory, and in this time gas prices could fluctuate considerably. (During the course of a year, wholesale gas prices can go up and down twenty-five cents a gallon or more.) This, added to the cost of borrowing money to purchase the extra gas -- if it proved possible to borrow the money -- could take a sizeable bite out of our profit margin.

We looked into the possibility of hiring a semi tanker to stand by and fill the tanks, then remove the product when the tests are completed, and found it would be difficult and costly.

The EPA requires that tank testing methods have a probability of detection of at least 95%, and that the probability of false alarm not exceed 5%. Because this procedure is used in conjunction with other release detection methods, the probability of detection is not of great concern. It was the possibility of false alarm that worried me. What if we were one of the 5% that got a false alarm? It could be disastrous.

Moreover, if we chose the inventory control option we would have to raise our gas prices enough to recover the costs of the annual tightness tests, as well as those other costs mentioned above. The difficulties presented by this are discussed in a later section of my testimony.

Once we recognized all the problems with testing, it became clear that because of their dependency on tightness

tests, any of the options that hadn't been ruled out on other grounds were now eliminated. We simply could not risk implementing them with no way of knowing what the final costs would be, and the possibility that they would exceed our financial capabilities.

We had already come to the disturbing realization that given the nature of these regulations and their implementation, we could be facing the eventual loss of our gasoline retailing business. We had hoped to postpone it, but had pursued leak detection options for the tanks and found that the uncertainties and costs were such that we would not be able to use any of them, and we hadn't even begun to consider the costs of spill and overfill protection, leak detection for pipes, or insurance.

This left us with one option. Close the tanks.

This was a bitter pill to swallow. Gas sales are an integral part of our business, yet we had no alternative given the circumstances.

We considered what the loss of this appendage would do to our business. Of first concern was the fact that we would immediately lose one third of our income, and would need to find a way to replace it. Relying on the rest of the business to replace the gas income to that extent is a great risk, but it was one we would have to take.

We were very concerned with the question of our public image. We don't know the exact extent to which the gas retailing draws customers for our repair business, or what the public impression would be when we removed the tanks. Because we are defined as a gasoline service station, we would need to do a lot of PR redefining our business to assure the public did not have an unfavorable impression of what was happening.

Tank Closure

There are strict regulations for the closure of tanks, which allow a twelve month temporary closure period, after which the tanks must be filled or removed. The state of Montana allows tanks to be filled in place only in extreme circumstances, such as if their removal would threaten existing structures.

We got rough estimates for the cost of removing the tanks, which were in the area of \$8000, and which did not include possible cleanup costs if the level of soil contamination required removal and disposal of the soil.

We would not expect our cleanup costs to exceed \$17,500, because the state of Montana has established a fund to assist UST owners in fulfilling the financial responsibility requirements, and this fund would cover half the costs of cleanup operations until a \$35,000 deductible is met, at which point all cleanup costs would be covered by the fund.

I went to the bank to discuss the possibility of securing a loan for the removal process. This was a difficult meeting to prepare for. First, the purpose of the loan would be a to terminate a major source of cash flow and profit. Second, without the income from gas sales continuing, money to repay the loan would have to be provided by the repair business, and the negative effect the removal of gasoline sales would have on the rest of our business could not be estimated. Third, I could not be specific as to how much money would be needed. And I was not at all certain I could explain the situation satisfactorily to someone with no knowledge of the complexities involved.

Not surprisingly, the bank was somewhat wary of my proposal, and would make the loan only against collateral. We had none to offer.

It appeared we might lose our entire business, for lack of money with which to eliminate one third of it. We could be subject to exorbitant fines for non-compliance. While we had no intentions of not complying with the regulations, fines or no fines, it looked like all we could do was close the doors. This was a very upsetting prospect, to put it mildly. We went into serious consideration of how to buy time with the fervent hope that our government would not allow this to happen to us and tens of thousands like us.

We found that we could postpone the impending doom for 24 months by choosing the inventory control method for a year, then putting the UST into temporary closure before the end of the first twelve months, when a tank test would be required. Our tanks would have to come out at the end of the twelve month temporary closure period, because they could not be placed back in operation without being upgraded. Unless Congress acted by the end of the year, our gas retailing operation would be gone, but we still might be able to save the repair business if Congress could come up with a plan to give us financial relief.

Problems Associated With Costs

With all the complexities involved, it is easy when pursuing one angle of thought to lose track of some important relationships to other areas. There are basically two areas of concern to be addressed when considering the overall cost of the technical requirements. They are finance and market.

Finance

Finance includes the specific problems of funding compliance with the regulations. Obtaining financing for compliance is complicated by the fact that it's difficult to determine what the actual cost will be until the project is complete.

Also, some of the expenses are working capital outlays, not capital purchases. While capital purchases would provide security for financing, they don't necessarily guarantee a large enough return to repay the debt. Firms that are already fully mortgaged, and there will be many, will have a hard time obtaining unsecured loans.

Market

The second area concerns the effects on the retail gas market of the implementation of the regulations; in particular, effects of the phase-in period, which causes severe disturbances in the market.

In response to a recent letter from Rep. Pat Williams of Montana regarding the impact of the regulations on small firms, Ronald Brand, Director of Underground Storage Tanks at the EPA, cited the phase-in as an example of the EPA attempting to minimize the burden on small businesses. In discussion of the rules, found in the Federal Register, EPA states that it does not believe release detection could be installed and conducted at all the sites in less than five years, (the release detection industry is not capable of handling that amount), and that the main impact of the phase-in period would be to spread out release detection on unprotected tanks which would result in fewer "implementation bottlenecks."⁶ Whatever the reason, the fact is that the

⁶Federal Register, Part II EPA 40 CFR Parts 280 and 281, Sept. 23, 1988. (Technical Requirements) P. 37146

phase-in itself causes severe hardship to those required to comply years before their competitors. It creates an imbalanced market, wherein businesses with older tanks are being required to finance the monitoring and to recover those costs during a period of time in which much of the competition has not had to expend or recover a penny.

The motor fuel marketing sector consists of several types of outlets, operated by either refiners, chains, jobbers, or independents. Refiner and chain operated stations are generally high volume, self service, convenience store operations. Many of the independent stations are full service outlets with auto repair facilities, while others are convenience store operations.

The profit margin on gasoline is minimal, and there is very little room to increase it. Competition in gasoline retailing is fierce. Many outlets use low gas prices as a draw for customers. Gas wars are frequent, and even a marginal increase in price can mean a dramatic decrease in sales.

The amount an outlet would have to raise retail gas prices in order to recover costs of compliance would depend on the volume of gas sold. We have an annual gas sales volume of about 50,000 gallons. To recover the costs of compliance between now and December 1998, by which date all tanks must be upgraded, the price of our gas would have to go up drastically. Outlets with a volume of five to ten times that of ours, which are common, would get by with a substantially lower increase in retail price.

Not only does this tip the balance in favor of the high volume operations, but the newer ones need only pay for a tank tightness test once every five years in order to meet leak detection requirements, and their deadlines for compliance start at a later date than those for older tanks.

So the cost is spread out over many times the number of gallons of gas, and over several more years.

As the price difference increases, we would expect a decrease in sales volume; thus the cost of compliance would be spread over fewer gallons of gas, causing a still higher increase in retail price, and a spiral effect would follow. While smaller volume outlets have been able to retain customers and compete with the conditions as they were before the regulations were imposed, it is clear that this situation will drive them right out of the market.

Nationwide Impact

We must consider the unpleasant side of the EPA's regulatory and economic impact analyses. If 47% of the small motor fuel outlets survive year 15 of these regulations, that means that 53% of them will not.

Of the nation's 193,000 service stations, 72%, or nearly 140,000, are small firm outlets. This means that over 73,000 stations will be closing their doors in the next 15 years as a direct result of these regulations.

What are the conditions of their closure? What are the effects on the public?

Property values have dropped in many areas of the nation, and in addition, the value of service stations with bare steel USTs (estimated to be three fourths of the systems in the country) has declined because of these regulations. UST systems that had been assets became liabilities in December 1988, when the technical regulations became effective. Many UST owners will face a combination of problems that will not allow them to leave the market gracefully, but lead them down the path to bankruptcy.

Gasoline distributors, parts wholesalers, office suppliers, tool salesmen, industrial laundry services, lawyers, accountants, banks, and many other types of businesses will be adversely affected by the failure of these service stations.

Full service facilities alone, which comprise less than half of the nation's gasoline outlets, employ nearly 450,000 persons. The loss of jobs in this sector would have a significant impact, further burdening already strained unemployment insurance and social welfare programs, causing credit card, auto, and home loan losses, removing millions of payroll dollars from circulation, depleting savings and reducing investments. Persons finding themselves suddenly without a source of income will face a plethora of financial and emotional problems.

The SBA has over \$200,000,000 invested in nearly 2,000 loans to gasoline stations.⁷ If half of those stations fail, the SBA could suddenly find itself not only holding \$100,000,000 in bad debt from service stations, but as the proud new owner of thousands of USTs, each needing to be replaced, upgraded, or removed before the properties were saleable, and facing exorbitant fines in the meantime.

If SBA has 2,000 loans out to gas stations, then obviously the bulk of the stations are financed through the private sector. Banks are facing the same problems as SBA with their service station loans, on an even grander scale.

The public stands to lose vital services with the disappearance of these businesses. Remote areas could lose the only service stations within a reasonable distance. Persons unable to pump their own gas will have a hard time

⁷SBA figure provided by the Bozeman, MT office of Senator Max Baucus.

finding a full service station to do it for them. Gas prices will increase anyway because of compliance costs, but competition controls the market, and when large firm outlets lose half the competition from the small firm outlets, prices could soar.

As I indicated, I have not touched upon the cost or problems pertaining to meeting requirements for financial responsibility. Even if all the cost associated problems discussed are solved, in less than a year many businesses, like ours, will have to close for lack of ability to comply with the financial responsibility requirements. If there is not enough equity in a business to show proof of financial responsibility, and insurance is not available, businesses will not be able to meet these requirements.

Related Legislation

In addition to the UST program, several pieces of legislation are being considered that will affect the nation's service stations. These include the Clean Air amendments, which cover alternative fuels and vapor recovery systems requiring special underground plumbing; used oil regulations; used tire recycling regulations; automotive air conditioning systems regulations; and hazardous waste regulations, to name a few.

Solutions

In order to be of value, any solution offered must achieve the ends sought by the statute and relieve the adverse impact on small businesses. The implementation of the regulations puts tremendous financial burdens on small firms, most of which, according to EPA's own estimates, are unable to bear them.

To relieve the impact on small service stations, solutions must meet the needs of both areas of concern in financing compliance and in reducing the unfair market impact, as well as those concerns regarding the financial responsibility requirements. It is important to remember that the problems are intertwined, and conclusions cannot be drawn in one area without first determining if it is reasonable in light of the specific problems in other areas.

Any assistance packages offered should be available to those stations that find they will be facing closure as well as to those that will go ahead and make the upgrades.

Aid packages should be retroactive to the date of implementation of the regulations, December 1988, to assist those firms which have already had to close under unfavorable financial conditions as a direct result of the regulations.

Loans

Government loans could provide relief to small firms if they met certain conditions.

Because the nature of the technical requirements is such that final costs cannot be determined before beginning compliance procedures, loans would have to allow maximum flexibility in amount and repayment periods. In order for them to be available to all firms needing them, security requirements would also have to be flexible.

Because of the nature of implementation of these regulations, loans granted to older stations with earlier compliance deadlines would need to be deferred payment loans with no interest accrual during the deferment period, in order to relieve the impact of the phase-in as described above. All stations should begin paying for compliance at the same time, and none should be required to sustain the

extra costs of interest bearing loans during the phase-in period.

If loan packages do not relieve both the financial burdens and the impact of the phase-in period, they will not help the threatened firms.

Site-Specific Fund

A site specific fund could be set up to aid owners in meeting the technical requirements. The fund could be administered on local levels and could be contributed to in a manner that would remove the financial burden from individual UST owners and spread it equitably, as by an excise tax or fee on gasoline, over the whole of society, who are the ultimate beneficiaries of these regulations.

This type of fund would make money for compliance available to those owners facing immediate deadlines, and be available to others being phased in as their deadlines approached.

It could eliminate the adverse impact of the phase-in period by providing funding on a basis unbiased as to size of the station or age of the UST, and remove the need for individuals to spread compliance costs over varying levels of retail sales by recovering costs at the refiner or wholesale level, thus allowing competition to remain fair.

A site-specific fund would relieve both the financial burdens and the impact of the phase-in period, and warrants very serious consideration as it appears to be the most equitable solution.

Postponements

Regulations need to be enforced to be effective, of this there is no doubt. The proposal to postpone enforcement of these regulations raises some serious questions that need to be addressed, for example the problem with the availability of Superfund monies to firms that are out of compliance.

I have no doubt that Congress could find a way to work around these problems. Perhaps there is a need to consider the possibility of postponement of further implementation of these regulations, rather than of enforcement.

There is one major benefit to postponing enforcement or implementation of these regulations. It is time.

The EPA expects most of the costs of compliance to be incurred in the first five years of implementation. The type of outlet hardest hit by these regulations are the older, family operated facilities. We are being affected NOW, and many are already closing because of this legislation.

We need time, as a nation, to work out solutions to these devastating problems. It will take time to investigate and set up loan programs or funds for these sites.

States need time to establish programs such as the one in Montana that reduces the burdens of financial responsibility.

Implementing agencies need time to prepare good programs. They need time to evaluate and understand the regulations and the difficulties they impose. They need time to hire and train the necessary staff and to obtain the equipment needed to service their domain.

Congress needs time to coordinate the various legislative issues affecting service stations to reduce the conflicts and burdens involved.

Time could be used to reconsider a variance. The EPA initially considered offering a variance to certain sites, but determined it would be too difficult to set up guidelines for variances at a federal level.⁸ Perhaps with further study the difficulties could be resolved.

Conclusion

Mr Chairman, all owners of USTs are considered part of the "regulated community." They are not limited to service stations. They include local governments, airports, farms, industries that deal with hazardous materials, and many more. They became part of the regulated community in 1988, not before that. Any person entering a business that utilizes USTs now can make evaluations and decisions based on current conditions. When we made the investment in our business ten years ago, these regulations did not exist. We did not have the benefit of considering what their impact would be before making investments. The regulations contain no grandfather clause to protect us.

I fully support the purpose of these regulations, which is to help ensure a clean environment for our citizens. I am a citizen. I want clean drinking water for my family. I drink the same water as everyone else in my town and I don't want to spoil it for them anymore than for my own children. I have no conflict with the intent of the statute underlying these regulations, only with the method of its

⁸Federal Register, Part II EPA 40 CFR Parts 280 and 281, Sept. 23, 1988. (Technical Requirements) P. 37168

implementation. Many UST owners may just abandon their systems or choose to ignore the regulations because of an inability to meet the requirements, which would defeat the purpose entirely.

The failure projections are unacceptable. This is America. Surely we can achieve our goals without causing so much hardship to such a large segment of our society.

We provide vital services to our community. We put the gas in your mother's car when it's 20 below zero, and in your disabled friends and neighbors' cars. We put the spare tire on your car when you get a flat on your way to the airport to catch a flight back to Washington. We help your sons and daughters who break down on the highway on their way to college. We make payment arrangements with people who can't afford the repairs their cars need. We wash your windshield and check your tires before you set off on a road trip. We are actively involved in our schools and our community. We belong in our town, our business belongs there. It is our home, our life, and it is not right that we be forced out of it through the imposition of these regulations.

Mr. Chairman, that concludes my testimony. I would be pleased to answer any questions you or other members of the committee might have.

Before The
United States Senate
Committee on Environment and Public Works
Subcommittee on Environmental Protection

Oral Statement
of
F.C. "Tally" Roberts, Jr.
Acme Petroleum and Fuel Company, Inc.

On Behalf of
The Society of Independent Gasoline Marketers of America
and
The National Association of Convenience Stores

February 20, 1990
Washington, D.C.

Thank you, Mr. Chairman. My name is Tally Roberts. I am Chairman of the Board of Acme Petroleum and Fuel Company, Inc. of Gastonia, North Carolina. I appear today on behalf of the Society of Independent Gasoline Marketers of America — SIGMA — and the National Association of Convenience Stores — NACS. Acme is a family-owned business started in 1935 which owns and operates 125 retail gasoline outlets and convenience stores in North and South Carolina. My company is a member of both SIGMA and NACS, and I have the privilege this year of being SIGMA's President.

I will summarize NACS and SIGMA's testimony, which has been submitted for today's hearing record. Mr. Chairman, in the next few minutes, I would like to comment on three matters. First, the gasoline marketers need to "fly the flag upside-down" concerning the tank financial responsibility situation. SIGMA and NACS, along with PMAA and SSDA, believe immediate action is necessary — either by EPA or Congress — to delay the current financial responsibility deadlines until December 22, 1991.

Second, NACS and SIGMA, given insurance availability and affordability problems, believe that State tank trust funds are necessary to help the nation in cleaning up leaking tanks. However, these State funds are not perfect and, in some instances, are underfunded. A delay of EPA's compliance deadlines will enable Congress, EPA, the States, and the regulated community to address how to improve tank financial assurance. To this end, SIGMA and NACS conceptually would like to suggest expanding the uses of the Federal LUST Trust Fund.

Third, the problem of tank leak cleanups is being exacerbated by several elements of EPA's tank technical standards and by overly-rigid State implementation. Cleanup costs have soared in recent months. There are ways to streamline this process which will benefit the environment while, at the same time, reducing or containing costs. Congress, thus, needs to send a clear signal in this area to EPA and the States.

Before I forget, let me add that NACS and SIGMA agree with the comments of PMAA and its testimony on lender issues. I could stay here all day discussing problems with lending institutions because of tank and other environmental concerns.

Senator Durenberger's State environmental agency released its annual tank report for 1989 last month. Under the heading "Insurance," the agency says that it "agrees with tank owners that liability insurance costs are too high, are scheduled to be implemented too soon to allow tank owners to find appropriate insurance, and that insurance, when available, is too expensive."

The Members of this panel are well aware that a debate has raged since last summer over whether tank leak insurance is available to meet EPA's regulations and its deadlines. SIGMA and NACS maintain that insurance availability and affordability must be considered, and must be considered separately.

I am sure that the panel will hear conflicting testimony today about insurance availability. It is unfortunate that the two leading providers of such coverage -- Federated and Petromark -- are not appearing at this hearing. Recent developments with both of these providers have cast tremendous uncertainty about insurance availability.

I cannot sit here today and tell you that insurance is not available. There are several companies who are offering coverage. However, your analysis should not stop here. Ask these firms about their underwriting standards, whether their policies comply with EPA's requirements, how many applications they have received, how many tanks they have quoted, and how many policies they have written. I think you will find that the word "available" is used too liberally.

If Petromark does not continue in business, and given Federated's scaling back, there could be a "wave" of petroleum marketers back in the insurance market

between now and April 26 -- the next EPA compliance date. Even if insurance is "available," and complete applications are submitted, it is unlikely that coverage for tanks can be underwritten and bound in time.

Affordability of insurance, if available, also is a problem, even for the larger, independent marketers. The recent SIGMA, NACS, and PMAA survey provided to the panel indicates that premiums increased over 156 percent from last year and are continuing to go up. Even if insurance is offered, it is becoming less and less affordable for more and more marketers. At the average per-facility cost of insurance in the survey, Acme's cost for EPA-complying coverage this year would be at least \$325,000. That is my bottom line for 1989! I'm one of those 100-999 tank owners some Members of the Senate felt last fall could afford tank insurance at any cost. Hopefully, I can disabuse you of this notion.

SIGMA and NACS, accordingly, believe that keeping the current compliance deadlines to "hold people's feet to the fire" is no longer valid. The uncertainty in this area will not be resolved by April 26. Moreover, time is needed to re-examine where we're going with financial assurance in general. EPA, NACS and SIGMA, along with PMAA and SSDA, have recommended that the regulations be postponed until December 21, 1991. EPA, we believe, has the authority to alter its compliance deadlines. The Agency, however, needs a clear "signal" from this Subcommittee or Congress to move ahead with such a change. SIGMA and NACS can't underscore enough the need for prompt action in this matter.

NACS and SIGMA believe that State tank trust funds are a reliable way to satisfy the Federal regulations and to remedy tank leaks. Today, 37 States have established trust funds. However, only five have been approved by EPA. Another 17 States have their funds awaiting action by the Agency. At this time, only six States have fully-operational funds that are paying claims. All 37 State funds cover some part of

cleanup costs, while only 29 State funds may be used for third-party claims. Moreover, there is tremendous variability among the State funds, including deductibles, cost recovery, and financing sources.

Don't get me wrong; SIGMA and NACS support trust funds. Along with PMAA, SSDA, and API, we have developed a model State tank trust fund bill. The gasoline marketers continue to work hard in the States on such funds. However, despite EPA's eagerness to approve State funds, the Agency's recent strategic plan, in discussing tank leak cleanups, says that "owners and operators will have primary responsibility for funding cleanup through insurance or private funds." Obviously, we're looking at a "Catch-22" situation. Therefore, the deadline shift we have proposed becomes useful also in the State tank trust fund area.

This interim period -- that is, until December 22, 1991 -- will give Congress and everyone an opportunity to craft a better solution. NACS and SIGMA want to play an active role in this process. Independent gasoline marketers want to protect the environment, and SIGMA and NACS believe that we can offer reasonable and workable suggestions.

For example, the uses of the Federal LUST Trust Fund can be expanded to "backstop" State tank trust funds, particularly because of recent concerns that some State funds are projecting total liabilities far exceeding total revenues. While we have not yet "fleshed out" the details, let me suggest conceptually one possible solution.

The LUST Trust Fund, originally established at \$500 million over a five-year period, will reach this level later this year. The existing excise tax -- 1/10 cent per gallon -- could be extended for an additional period of time, such as three years. The excess amount generated over the \$500 million could be funneled to the State tank trust funds on a formula basis, provided that: (1) the State has enacted a fund; (2) the fund meets minimum specified criteria and has been approved by EPA; and (3) EPA certifies to the Treasury Department that the State's fund is in place. Such an approach will

enable the State funds to be actuarially sound, will give the political and economic incentive to those States without funds to adopt them, and will assure that actual cleanups will be accomplished.

Finally, SIGMA and NACS are concerned with regulatory overlaps between EPA's tank program and other environmental regulations that are slowing down cleanups and increasing costs unnecessarily. This problem is exacerbated by junior-level State regulators, afraid to "stick their necks out," who are asking tank owners to study a cleanup "every which way" before proceeding with the actual work. There is no "black magic" to cleaning up a gasoline tank leak. Accordingly, Congress needs to tell EPA and the States unambiguously that a tank leak cleanup should and must be handled differently than a Superfund removal or remedial action, or a RCRA Subtitle C corrective action. If a "wall" is built between the tank program and these other areas, tank leaks will be remedied faster, better, and cheaper.

I appreciate this opportunity to present SIGMA and NACS' views. I will be happy to answer any questions you may have.

JOSEPH L. KOACH, CAE
Executive Director

ALABAMA SERVICE STATION
DEALERS ASSN.
ARIZONA UNITED SERVICE
STATION DEALERS ASSN.
ARIZONA SERVICE STATION
DEALERS ASSN.
ARIZONA SERVICE STATION
& AUTO. REPAIR ASSN.
NORTHERN CALIFORNIA
PETROLEUM RETAILERS ASSN.
SOUTHERN CALIFORNIA
SERVICE STATION ASSN.
COLORADO SERVICE STATION
DEALERS ASSN.
CONNECTICUT-RHODE ISLAND
GASOLINE RETAILERS &
GARAGE OWNERS ASSN.
FLORIDA SERVICE STATION
DEALERS ASSN.
FLORIDA GASOLINE RETAILERS
& GARAGE OWNERS ASSN.
HAWAII AUTO. & RETAIL
GASOLINE DEALERS
HAWAII SERVICE STATION ASSN.
HAWAII GASOLINE
DEALERS ASSN.
HAWAII AUTOMOTIVE
SERVICE ASSN.
HAWAII SERVICE
STATION ASSN.
HAWAII GASOLINE
DEALERS ASSN.
HAWAII STATE GASOLINE
RETAILERS ASSN.
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MARYLAND SERVICE STATION
& AUTO. REPAIR ASSN.
HAWAII STATE GASOLINE
RETAILERS ASSN.
HAWAII SERVICE
STATION ASSN.
HAWAII AUTOMOTIVE ASSN. OF
HAWAII & KANSAS
HAWAII TRADES OF
HAWAII
HAWAII GASOLINE RETAILERS
HAWAII STATE GASOLINE & AUTO.
DEALERS ASSN. OF HAWAII
HAWAII HAMPSHIRE & VERMONT
HAWAII SERVICE STATION DEALERS
ASSN. OF NEW MEXICO
HAWAII STATE ASSN. OF
SERVICE STATIONS
HAWAII CAROLINA SERVICE
STATION ASSN.
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DEALERS ASSN.
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HAWAII STAR SERVICE
STATIONS ASSN.
HAWAII RETAILERS
HAWAII ORGANIZATION OF UTAH
HAWAII GASOLINE & AUTO.
REPAIR ASSN.
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AUTO. SERVICES ASSN.
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ORGANIZATION
HAWAII VIRGINIA GASOLINE
DEALERS & AUTO.
REPAIR ASSN.
HAWAII RETAIL GASOLINE &
AUTO. TRADES ASSN.



499 South Capitol St., SE, Suite 407
Washington, DC 20003
(202) 479-0196

STATEMENT OF JOHN TAGGART, PRESIDENT
AUTOMOTIVE TRADES OF MONTANA, INC.
ON
FEDERAL UNDERGROUND TANK REGULATIONS
BEFORE THE SENATE SUBCOMMITTEE ON
ENVIRONMENTAL PROTECTION

FEBRUARY 20, 1990

EMMETT PROBUS
President
Columbia, KY

DENNIS HILL
First Vice President
Wilmington, WI

DENNIS DUCOTA
Second Vice President
San Antonio, CA

DON JOHNSTONE
Third Vice President
Indianapolis, IN

MARY ANN RAGONE
Treasurer
Pasadena, NY

Mr. Chairman, Members of the Committee:

My name is John Taggart, and I am President of Montana's Service Station Dealer Association, "Automotive Trades of Montana". ATOM is an affiliate of the Service Station Dealers of America, whose General Counsel, Jim Daskal, accompanies me today.

We appreciate the opportunity to present our views on the problems associated with the implementation of federal underground storage tank regulations, particularly in a rural state like Montana.

Like all environmental regulations, the tank rules will impact the smallest businesses the hardest. As representatives of the public, you should be very concerned that these regulations, as well as other costly regulations like Stage 2 vapor recovery, will decimate the independent dealers like myself. This will deprive consumers of important price competition and leave a market dominated by stations owned and operated by Big Oil.

The loss of service and amenities will follow. We have all seen the no air , no water, no restroom facilities on the rise. In many towns in the intermountain west, "quick fix " repairs are not available.

The availability of gasoline in small towns will be in serious jeopardy if you do not take steps to help us with these regulations. In parts of Montana already there are 50 miles between stations in many cases.

Before I discuss the questions Senator Baucus asked in his letter, there is a very important point I want to leave you with.

Don't believe for a minute that Big Oil will bear the costs of these regulations, or regulations such as Stage 2.

In many cases the oil companies have dumped their older stations with the worst, most leak prone tanks on dealers.

The reason for this is that when an oil company decides to sell a station, or that renewal of a franchise is uneconomical, or to withdraw from a market, the Federal Petroleum Marketing Practices Act, which you co-sponsored,

Senator Baucus, requires the oil company to sell the station property to the dealer or jobber who was leasing the location.

In Montana, we have seen 7 refiners withdraw from marketing in recent years, including Texaco, Amoco, Mobil, Phillips 66 and Union Oil.

Additionally, across the country, oil companies have non-renewed thousands of dealer franchises on the basis that it is "uneconomical" to renew. The reason it is uneconomical is usually because they don't want to spend the money to upgrade the tanks. The bottom line is that thousands of individual dealers now own stations with older tanks that have dumped by Big Oil. The Committee must realize that we do not have a deep pocket to fall back on.

Let me now turn to the questions Senator Baucus asked.

1. IMPLEMENTATION OF TECHNICAL AND CLEAN UP STANDARDS

Let me address the major problem dealers have had in

trying to comply with the technical standards, particularly upgrading and replacing tanks: the inability to obtain financing.

The fundamental problem is that lending institutions fear that by lending money to dealers, they stand to inherit liability for a tank leak. They think that a leak would break the dealer financially, therefore they will have to foreclose on the note, subjecting themselves to liability, including Superfund liability.

We have proposed two solutions to the problem. First, we have asked EPA to join with us in conducting educational programs for the lending institutions, in order to clear up misconceptions such as the idea that Superfund applies to underground tank leaks.

Next, we believe that the definition of "owner" in Section 9001 of RCRA must be amended and have enclosed suggested language. This step is absolutely essential.

Let me add as an aside that potential Superfund liability would be a major concern with any alternative fuels program.

Another major problem is the shortage of qualified contractors to do tank upgrade and replacement. I would add that this problem is a large part of the reason for the phase in over a period of 10 years for the technical standards.

You should also be aware that these same contractors are the same people would do the work to install Stage 2 under S.1630. This shows that the idea that Stage 2 could be in place in many non-attainment areas within 2-3 years is totally absurd.

With regard to the clean up standards, let me express our deep concerns that the pending revisions to EPA's toxicity characteristic rule could significantly impede clean-ups. We adopt and incorporate the views of SIGMA on this critical point.

II. AVAILIBILTY OF FINANCIAL ASSURANCE AND A SUSPENSION OF ENFORCEMENT OF THE REGULATIONS

Our views on thses two issues could not be more clear.

For the individual gasoline dealers, insurance have never been readily available. Today, it simply is not available, period.

The only realistic method for our dealers to demonstrate financial responsibility is the creation of state funds. To date 37 states, including Montana, have created funds.

There are two major concerns we have with the state funds. First, many of the funds do not meet all the requirements of the financial responsibility rule. For example, many funds only cover clean up costs, and do not cover third party liability. At this point I would add that we had hoped that insurers would issue "wrap-around" policies that would fill in the gaps between the state funds and the rule requirements. The apparent downfall of Petromark has ended those hopes.

Our second concern is that many state funds may not be adequately capitalized. We think that the idea of making federal LUST trust fund money available to the states ought to be seriously explored.

On behalf of ATOM and myself let me state that the oil companies are the persons who installed the tanks that are causing most of the problems. We think that they should be a large part of the solution.

With regard to a suspension of enforcement of the financial responsibility regulations, both SSDA and ATOM could not support it more strongly, and have already petitioned EPA to do so. Our reasons are as follows.

First, the methods of complying with the rule are simply not there.

Second, we believe a "cooling off" period in order to assess the fallout from the Petromark situation is absolutely necessary. Petromark wrote almost 1/2 of the policies in this country. The gravity of the situation cannot be overstated.

Third, we need the time to amend the existing funds to comply with the regs, and to create funds in the states that do not have them. Also, time is needed for EPA to review and approve the state funds.

Finally, we believe that time is needed to educate the insurance industry on the realities of underground tank

leaks.

Simply put, we are not hazardous waste sites, and should not be treated as such.

III. EFFECTS OF A SUSPENSION ON ABILITY TO SECURE FINANCING

The SSDA does not believe that a suspension of enforcement will have any material, adverse effects on our ability to secure financing for equipment upgrades or clean-ups.

If anything, the suspension will help demonstrate the gravity of the current situation, and give us the time necessary to assure that state funds are adequately capitalized with respect to clean-up costs.

IV. THE COST AND AFFORDIBILITY OF INSURANCE

The answer to this question is of necessity an educated guess, because insurance has never been readily available to the average dealer.

One aspect of cost that should not be ignored is the

of the site checks required by insurers before they will consider issuing a policy.

This generally involves taking soil borings at the location, and clean-up of any existing contamination. The cost of these tests varies depending on the region of the country, however, at a minimum they cost several thousand dollars.

With regard to actual premium costs, there are a wide range of numbers around depending on age and type of tank, with costs of several thousand per tank, per year not uncommon.

This brings us to the question of affordability. We must first point out that the median net worth of a dealer firm is \$81,000. Dealers today are trying to implement several major environmental initiatives including small quantity generator regulations, community right-to-know, used oil regulations, and Clean Air initiatives such as reducing the volatility of gasoline and tightening I&M programs. Nevertheless, the tank regulations are our top priority, which is a major reason why

we ask you to let us focus our limited resources there, as opposed to squandering them on costly, ineffective and redundant Stage 2 controls. You cannot expect us to survive the implementation of Stage 2 on top of the tank rules and everything else.

In sum, we do not expect insurance to be either available or affordable anytime soon.

V. OBSTACLES TO COMPLIANCE

We have previously discussed what we see as the two main obstacles to compliance with the technical standards: lack of capital due to the "lender liability issue"; and the shortage of qualified contractors to do the upgrade work.

With regard to the financial responsibility provisions, the major obstacle we see is the general reluctance of insurers to enter the "pollution liability" market at all. Our proposals to help alleviate this situation are included in the following section.

VI. THE IMPACT ON SMALL BUSINESS, RURAL AREAS, AND SOLUTIONS

It is crystal clear that many stations will close forever due to the tank regulations. Rural areas will be particularly hard hit because of the lack of financial resources available to the dealer; and because the investment simply isn't worth it in light of the low volumes of gasoline pumped at rural stations.

We are already hearing reports of instances where consumers must drive 10, 15 miles or more to purchase gasoline. If we are hit with another shortage anytime soon, the effects on rural America would be catastrophic. We must take every possible step to mitigate such effects.

Additionally, the impact on petroleum marketing generally will be severely anti-consumer. We have attached an article in a trade publication which shows how Big Oil has taken advantage of the impact of environmental regulation to buy out independant dealer and jobber competitors, and convert locations to outlets owned and operated by them.

Again, every step possible must be taken to avoid the inadvertant creation of a market controlled by the oil

companies from wellhead to consumer gas tank.

Accordingly, we urge you to make available to us funds to comply with these regulations. We see several alternatives.

The easiest of these to administer would be to allow the states to apply for LUST trust fund money to be used for grants or low interest loans for station upgrades. A suspension of enforcement of the regulations would be necessary to give us time to go to the states and obtain any necessary legislative authorization, and go through state rulemaking procedure.

A second alternative would be to have the program federally administered, most likely through EPA.

A third alternative would be to set up a federal guaranteed loan program, similiar to that which exists for student loans. This would entail setting up an entity we call "Polly Mae" to administer pollution control grants and loans, just as "Sallie Mae" runs the student loan program.

In any event, whether you adopt one of our proposed alternatives, or take any other option, creation of such a program is absolutely necessary.

We have previously discussed the second essential portion of a program : a suspension of enforcement of the financial responsibility regulations at least until December 1991. We would also like to work with you to revise the existing provisions on suspension of enforcement, as EPA does not consider the existing provisions "workable".

With regard to the shortage of contractors, consideration should be given to targeting existing federal job training programs towards this type of work, and providing tax based incentives for qualifying companies.

Finally, let me again emphasize that no small business group has ever been asked to implement so much environmental regulation at one time as have service station dealers. Tanks are our number one priority. Please keep this in the forefront of your thoughts as you deliberate over RCRA reauthorization, as well as Clean Air. We repeat that

programs such as Stage 2 will divert our resources from more important programs, and in effect "Rob Peter to pay Paul".

With the exception of Stage 2, which is a costly hoax, we have been willing to do everything you have asked of us to protect our environment. We in turn, are asking for your help in achieving the goal of environmental protection.

Amendment to Tank Owner Definition

Definition of Owner -

(1) Section 9001 (3) of the Solid Waste Disposal Act (42 USC 6991 (3)) is amended by adding at the end the following subsection:

(C) 'The term does not include any person who, holds indicia of ownership primarily to protect the owner's security interest in the tank; any commercial lending institution that requires ownership or control of an underground storage tank to realize a security interest held by the institution in that tank; or any corporate fiduciary that has legal title to an underground storage tank for purposes of administering an estate trust of which such tank is a part.

(2) Section 9003 (h) (42 USC 6991 b (h) (9)) of such Act is amended by striking out paragraph (9) and redesignating paragraphs (10) and (11) as paragraphs (9) and (10), respectively.



STATEMENT OF

Mr. Douglas Alexander
On Behalf Of

The Petroleum Marketers Association of America

BEFORE THE

Environmental Protection Subcommittee
Of The
United States Senate
Committee on Environment and Public Works

ON

UNDERGROUND STORAGE TANK PROGRAM
10:00 A.M.
Dirksen Senate Office Building - SD-406
Washington, D.C.

Good morning. My name is Doug Alexander. I am President of Story Distributing Company, a motor fuels marketing company located in Bozeman, Montana. I am here today in my capacity as a member of the Board of Directors of the Petroleum Marketers Association of America (PMAA). I am also First Vice President of the Western Petroleum Marketers Association. PMAA is a federation of 45 state and regional trade associations representing more than 10,000 independent petroleum marketers through the United States. These marketers sell approximately 50 percent of the gasoline, 75 percent of the home heating oil and 60 percent of the diesel fuel sold in this country. Eighty-nine percent of PMAA's membership is classified as small businesses under size categories established by the Small Business Administration.

PMAA commends Chairman Baucus for holding this hearing today and we appreciate being given the opportunity to testify. Our comments today will focus on three basic issues related to petroleum underground storage tanks. These are financial responsibility, lender liability and technical standards.

Throughout the past two decades, the people of this nation have shown an increased awareness of and sensitivity to environmental concerns. This has resulted in the enactment of such legislation as the Clean Air Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation and Liability Act (Superfund) and the Resource Conservation and Recovery Act, to name just a few of the protective measures that now have a far-reaching effect upon our nation's health and safety.

As citizens and parents, we all support the goals of environmental protection. No one here in this room today that would debate the contention that the preservation and protection of our land, air and water is necessary, not only for our own health, safety and welfare, but for that of our children and grandchildren. However, in an industrialized nation with a strong economy such as the United States, we also know that there will always be a tension between economic activity and environmental concerns, and that accommodations must be made to adjust this tension from time to time to arrive at a reasonable balance. Where the economic activity in question is the providing of a critical service to the public by small businesses, such as the delivery of petroleum products to rural areas, it is important that our environmental laws and regulations be carefully drafted to ensure that the economic burden is commensurate with the risk posed. An example of such a carefully drafted regulation is the final rule the U.S. Environmental Protection Agency (EPA) adopted last year which imposes technical standards for petroleum underground storage tanks (USTs). These standards are a balanced, reasonable and amply protective approach to the goals of prevention, detection and correction of petroleum releases. While these requirements will impose a significant hardship and cost on many petroleum marketers, the technical standards accommodate the needs of small business UST owners and operators by providing them with a reasonable amount of flexibility in their compliance options.

In other cases, the concepts underlying environmental legislation, while appearing rational and just in principle, sometimes impose disproportionate burdens, or have unforeseen and undesirable results when implemented. Section 205 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) is a case in point. A combination of intervening factors since this legislation was enacted, including insurance company withdrawals from the pollution liability market and skyrocketing insurance rates,

have hampered marketers' ability to obtain financial responsibility for their USTs. In addition, the increasing reluctance of financial institutions to lend badly needed funds to marketers to replace and upgrade their underground storage tank systems is becoming a critical problem.

As a result, some "fine-tuning" of the statutes applicable to underground storage tanks is advisable. The issue of financial responsibility is the first area in which such fine-tuning would be appropriate.

FINANCIAL RESPONSIBILITY

As mentioned previously, the Congress enacted SARA in 1986. Section 205 of SARA directed the Administrator of EPA to develop regulations requiring owners and operators of USTs to demonstrate financial responsibility for a minimum of \$1 million to cover the costs of cleanup and third party liability for releases from USTs. EPA issued these regulations in October of 1988. The regulations require owners and operators to meet their financial responsibility obligations on a staggered schedule based upon tank ownership. The first deadline applicable to independent petroleum marketers, those who own between 100-999 tanks (Category II owners) is October 26, 1989. The second deadline, applicable to those who own between 13-99 tanks (Category III owners), is April 26, 1990. The third, applicable to those who own 12 or fewer tanks (Category IV owners), is October 26, 1990.

While the October 26, 1989, deadline has come and gone, PMAA continues to have serious concerns about the ability of the vast majority of affected petroleum marketers in all three categories to meet EPA's requirements. Three critical factors-- (1) the difficulty in obtaining reasonably priced pollution liability insurance coverage, (2) the general status of the pollution liability marketplace, and (3) the unapproved status of state trust funds--all combine to make EPA's compliance schedule infeasible. PMAA believes that a delay in the financial responsibility deadlines is needed to allow these conditions to improve. We recommend that this delay be extended to at least December 22, 1991, at which point the leak detection deadlines applicable to the oldest USTs, and all pressurized piping, will have gone into effect. We believe that S. 1560, introduced by Senator Conrad Burns on August 4, 1989, is a good place to begin. Identical legislation, H.R. 3321 was introduced on September 21, 1989, by Representative Ron Marlenee.

o Majority of Marketers Lack Coverage

Last December, the three associations representing independent gasoline wholesalers and retailers, the Petroleum Marketers Association of America (PMAA), the National Association of Convenience Stores (NACS), and the Society of Independent Gasoline Marketers of America (SIGMA), again surveyed their members in an effort to ascertain the insurance status of marketers subject to the October 1989, April 1990, and October 1990 deadlines. The combined results of these surveys, released on February 13, show that more than 60 percent of these owners and operators do not have pollution liability insurance. When broken down into size categories, the survey results

show that more than 75 percent of Category IV owners (12 tanks or less) do not have insurance; almost 67 percent of Category III owners (13 to 99 tanks) are without coverage; and approximately 48 percent of Category II owners (over 100 tanks) have no insurance. Conversely, while 52 percent of the Category II owners responding to the groups' surveys did indicate that they had insurance, the vast majority of them--77 percent--are insured by Petromark. Petromark recently stunned the industry by announcing that it would no longer issue new or renewal coverage after February 7, 1990, pending a second review of its financial situation by an actuarial firm. If this second financial review confirms the adverse conclusions of the first review, then Petromark could face liquidation unless it secures additional capital, according to a February 8, 1990, announcement released by that company. This is truly a devastating blow to the ability of petroleum marketers to obtain coverage for their USTs.

When asked why pollution liability insurance has not been obtained, survey respondents answered most often that the cost of coverage is unaffordable. According to the survey results, for marketers subject to the October, 1989 deadline, the average premium has risen over the last 3 years by 310 percent. In 1988 their average premium was \$27,680. By 1990 it had risen to \$113,425. Marketers subject to the April deadline experienced premium increases of more than 163 percent, from approximately \$17,619 in 1988 to \$46,486 in 1990, according to the survey. Marketers subject to the October, 1990 category suffered premium increases of 158 percent during the same time period, from \$5,254 in 1988 to \$13,566 in 1990.

Despite these dramatic increases, PMAA marketers have made diligent efforts, at no little expense, to obtain insurance coverage. Survey respondents report spending an average of 46 hours themselves in the last 12 months in the pursuit of insurance. Employees, agents and others expended an additional 70 hours dealing with the financial responsibility issue. Not surprisingly, time expense is related to size, with larger businesses reporting an average of 69 hours for the marketer and 126 hours for employees, for a total of almost 200 hours--equal to 10 percent of a full person year--in the effort to secure or retain coverage. Attachment 1* is a copy of the combined survey results. Attachment 2 is a copy of PMAA's survey results. Attachment 3 contains letters that demonstrate the significant increases in premiums that marketers from different states and insured with different companies experienced in 1989.

o Insurance Scope and Capacity

According to an EPA list dated October 4, 1989, at that time, there were approximately eighteen companies writing pollution liability coverage for petroleum underground storage tanks. Since then, as mentioned previously, one of the major players in the pollution liability marketplace, Petromark, announced on February 8, 1990, that it could not continue to issue new and renewal coverage after February 7, 1990, pending a second review of its financial situation by an actuarial firm. Another company, Federated Mutual Insurance Company recently announced that it intended to withdraw from states that have enacted state trust funds (regardless of whether those trust funds have been approved by EPA), and from states that had not approved Federated's new policy. Federated's action, while perhaps understandable from a business point of view,

*The attachments to this statement have been retained in committee files.

eliminates a source of "wrap-around" coverage for those marketers who are required to demonstrate financial responsibility for the up-front deductibles established by their state trust funds. According to the joint survey conducted by PMAA, SIGMA and NACS, the vast majority of insureds represented by the three groups--88 percent--are covered by Federated and Petromark.

Furthermore, some of the companies on EPA's list offer pollution liability insurance coverage to only a few clients as a convenience to them, according to the American Insurance Association. Still another company, Environmental Protection Insurance Company (EPIC) has completely withdrawn from the pollution liability insurance market.

Of the fifteen companies remaining, only one, Oilmen's Insurance, has an established history in the underground storage tank pollution liability area. However, this company does not yet provide a policy that meets EPA's requirements. The rest are new to the field, and while their entry into the market is encouraging, not enough information about them is available to allow an adequate analysis of their underwriting capacity, responsiveness to claims, or a determination whether they are adequately capitalized. To our knowledge, only five of the eighteen companies on EPA's list (National Union/AIG; Federated; Fireman's Fund/Oilmen's Insurance; Evanston; and Great American/Agricultural Excess and Surplus Company) are Best rated.* Only a minority of these companies write coverage in all 50 states.

In addition, while most of these companies indicate that their policies are "designed" to comply fully with EPA requirements, EPA has not approved any of these insurance policies, and legal experts differ about the validity of these claims.

Marketers in noncompliance with the financial responsibility requirements face a daunting array of state and federal penalties. The federal penalty for noncompliance under RCRA is as much as \$10,000 per day. Under both state and federal law, marketers could also be subject to citizen suits for failure to comply. Marketers in noncompliance also face possible termination of supply contracts or the voiding of bank loan or other agreements which demand compliance with all applicable laws and regulations. Some marketers subject to the October 26, 1989 deadline have already been advised that they may not pull product from their supplier's terminal if they do not have the requisite amount of insurance coverage. EPA recently revised its enforcement policy to actively seek out noncomplying tank owners and operators. First to be targeted are those who operate in States with no trust fund legislation on the books. These states

*Best has been assigning ratings to insurance companies for over 50 years. An A+ rating is the highest. Companies that are rated lower than a B should be closely scrutinized. Some companies may not be rated because they are new to the marketplace; Best will not review a company until it has been operated for a 3-year period.

are Massachusetts, Rhode Island, New York, New Jersey, Maryland, West Virginia, Delaware, Kentucky, Indiana, Arizona, Washington, Idaho and Alaska. Later, EPA may focus on States with trust funds, to determine whether marketers there have purchased wrap-around coverage to fully comply with EPA's requirements.

o State Trust Fund Approval

Because insurance has become so expensive, state trust funds have been viewed by marketers as the only real alternative to insurance as a means of demonstrating financial responsibility. EPA regulations allow tank owners/operators to use state trust funds as a means to demonstrate compliance, but only if the state (1) submits to the EPA Regional Administrator a description of the State fund, along with a list of classes of USTs to which the fund will be applicable, and (2) provides to each covered owner/operator a letter or certificate describing the fund, within 60 days after the Regional Administrator approves it. Unfortunately, the process of approving state trust funds is proceeding much too slowly to allow marketers to use them as a financial responsibility mechanism. As far as we have been able to determine, of the approximately 37 state trust funds in place today, only five--Alabama, Georgia, Iowa, Louisiana and Mississippi have been approved by EPA. Nineteen states--Colorado, Connecticut, Florida, Illinois, Kansas, Michigan, Minnesota, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas and Vermont have submitted their trust funds for approval. Other states have had funds on the books for some time that are for the state's use only, so tank owners/operators cannot use them as a financial responsibility mechanism. These states are Maine, New Jersey, New York, Oregon and West Virginia. Additionally, Washington's program is a pool for reinsurance, not a trust fund. Of the sixteen states represented by Senators who are members of the Senate Committee on Environment and Public Works, only one has been approved by EPA; and only six have been submitted to EPA for approval. Of the remaining nine states, five have not enacted legislation to establish a trust fund, and four have enacted legislation but have not submitted it to EPA for its approval. Attachment 4 is a status report on state trust funds.

Factors slowing down the approval process include delays in state submissions, and inconsistent policies at the Regional Administrator level. Some of the Regions require the development of regulations before a trust fund can be submitted for EPA approval, while others merely require a copy of the trust fund legislation. A final factor which, we believe, plays a large part in the delay in the approval process is EPA's failure to issue its guidance on acceptable state trust funds in a timely manner. Although the states acted quickly to enact legislation--approximately 20 states established trust funds in 1989--they have had to do so in the absence of formal guidelines from EPA regarding what the Agency considers to be an acceptable fund. EPA finally issued its guidelines in late November of 1989. Because of the delay in the release of EPA's guidelines, PMAA believes that a large number of trust funds will be found to be unacceptable, and the states will have to go back to the drawing board.

Lastly, in our view, the states that are interested in going the trust fund route have generally been the ones that have already been active in enacting legislation and seeking EPA approval. Several additional states remain actively involved in efforts to enact trust fund legislation, although they have had to resolve political and other problems along the way. For these states, we believe that a delay would not serve to postpone legislative action, but rather would give them additional time to address these roadblocks to action. However, some states that have not been willing to consider or enact trust fund legislation to date may never do so. We raise this point in answer to those who believe that delaying the effective date of the regulations will remove any incentive for the states to act quickly to consider trust fund legislation. When all is said and done, we believe that there will always be some states that will be unwilling to provide this critical environmental benefit to its citizens. For those states, we doubt that the existence of a deadline will have any affect one way or the other.

In view of the above, PMAA supports a delay in the financial responsibility deadlines. A delay in the deadlines would allow marketers to invest their scarce resources in tank upgrades, replacements and monitoring, which are essentially, prerequisites to purchasing pollution liability insurance. This, in turn, should lead to a greater willingness by insurers to make available insurance at reasonable rates. A delay in the deadlines would also provide additional time for the state trust fund approval process to work. And, since many state trust funds as currently drafted may not pass EPA muster under the Agency's review guidelines, a delay would allow state legislatures further time to reconsider problem areas and to pass appropriate corrective legislation. As mentioned previously, PMAA supports a delay in the effective date of the financial responsibility requirements until at least December 22, 1991.

o Should Congress or EPA Take Action?

As you know, EPA decided, shortly before the deadline went into effect, that it would not exercise its authority to delay the October 26, 1989 deadline. Several reasons were given by the Agency to justify this decision. In PMAA's view, the primary reason underlying the decision is EPA's belief that Congress, not EPA should take the responsibility for delaying the effective dates, since the Congress established the financial responsibility requirements in the first instance. There are some who believe that EPA does not have the authority to take action in this area. PMAA disagrees.

Specific language authorizing agencies to act quickly to address situations such as the one faced by independent petroleum marketers subject to the October 26, 1989 deadline can be found in Section 553 of the Administrative Procedures Act (APA) (5 USC 553). This section of the APA allows an agency to issue an interim final rule without notice and comment when the agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest. (5 USC 553(b)(3)(B)). Additionally, an interim final rule can be made effective immediately "for good cause" found and published with the rule (5 USC 553 (d)(3)). Under the APA, therefore, EPA has ample authority to issue an interim final rule to delay the financial responsibility requirements based, among other things, on the

imminent approach of the deadlines, the status of state trust funds, the state of the insurance market, and the lack of affordable insurance coverage available to marketers.

Section 9003(c) of the Solid Waste Disposal Act required the EPA Administrator to issue financial responsibility requirements, and Section 9003(d) of that Act provides general guidelines for the Administrator to follow in developing such requirements. These sections provide the Administrator with general authority to act to delay the effective date of the financial responsibility requirements.

EPA was statutorily required to issue regulations for maintaining evidence of financial responsibility by the Spring of 1987. Nevertheless, EPA did not actually issue these regulations until October 26, 1988, one and a half years later. The regulations were made effective three months later on January 24, 1989. However, the compliance dates were phased-in over a 2 year period based upon tank ownership.

Although the Agency solicited comments on the phase-in, the deadlines selected were essentially arbitrary ones, based upon EPA's determination that "the relative unavailability of financial responsibility mechanisms (primarily insurance, the financial test of self-insurance, or state funds) present[ed] a problem for some members of the regulated community, and [that] a phase-in [would] help to alleviate this problem" (53 Fed. Reg. 43331). In justifying its decision to adopt a phase-in approach to the financial responsibility regulations, EPA cited reasons related to protection of the environment, impact on the regulated community, and the need for time to develop a new insurance market and to implement state trust funds. Not once did the agency feel the need to provide a statutory citation as a basis for its authority to adopt the phase-in approach.

Obviously, the Agency acted last October as if it had the legal authority to go forward with its phase-in plan. If it had the authority then, it has the authority now to make a determination that, based upon the status of state trust funds, recent developments in the insurance market, and the fact that a majority of tank owners subject to the financial responsibility deadlines are uninsured, the compliance dates initially adopted were not adequate, and a delay is in order. EPA can make this determination to delay the effective dates of the requirements based upon the statutory authority cited above, without reference to the standards established in Section 9003(d)(5)(D) for suspension of enforcement.

Nevertheless, where the issue of a delay is concerned, the Agency appears to be proceeding as if its hands are tied by the administratively burdensome procedures established for suspension of enforcement in Section 9003(d)(5)(D). For example, one reason given by the Agency to justify its decision not to take action prior to the October deadline had to do with the fact that, according to industry estimates, a large number of marketers, approximately 43 percent, actually had managed to obtain insurance

coverage. Thus, EPA decided, based on a simple head count, that it could not make the determination that methods of financial responsibility are "not generally available,"* one of the criteria established for suspension of enforcement.

The issue of which approach EPA uses to grant relief -- delay of the effective dates vs. suspension of enforcement -- has important legal ramifications. With suspension of enforcement, the LUST Trust Fund is unavailable if the tank owner has no insurance, and contractual requirements with suppliers and lenders which demand compliance with all applicable laws and regulations still remain in effect. A delay in the effective date of the requirements avoids these problems.

Even though PMAA believes a delay in the effective date of the requirements is a far superior solution to current problems than suspension of enforcement, the fact that the Agency has failed to issue any suspension of enforcement regulations severely limits the ability of underground storage tank owners and operators to take advantage of even this limited form of relief specifically afforded them by statute.

In the absence of any action by EPA, it then becomes incumbent on the Congress either to order EPA to act, or to act on its own initiative to delay the financial responsibility requirements.

o Leak Detection Implementation by Petroleum Marketers

There are some who have questioned PMAA's request for a delay in the financial responsibility requirements on the grounds that marketers allegedly are not acting responsibly to upgrade their underground storage tanks systems. However, according to the results of a survey recently conducted by PMAA, this concern no longer has a place in the financial responsibility debate. According to PMAA's survey results (see Attachment 5) a large majority of marketers have implemented leak detection programs at their underground storage tanks well in advance of EPA's requirements, which the Agency has phased in over a 5-year period.

As shown in Exhibit 1 of Attachment 5, a total of 86.9 percent of the survey respondents report having EPA-approved leak detection programs in place. Over 60 percent of the respondents indicate that they have a leak detection program covering all of their tanks; these respondents account for nearly 64 percent of total survey tanks. An additional 26.8 percent of respondents, accounting for nearly 34 percent of total tanks, report having leak detection at some UST sites. Only 2.7 percent of those surveyed report having no leak detection at their UST sites. We would note that those in this

*While PMAA believes that this standard does not necessarily apply to a delay in the effective dates of the deadlines, even if one accepts its applicability in this case, surely other factors, including the determination whether the insurance policies obtained actually meet EPA requirements, the status of the insurance market and the question of affordability, are important factors that EPA should take into account in determining whether methods of financial responsibility are "generally available" or not. When one looks at these factors, a strong case can be made both for suspension as well as delay.

category tend to be very small, owning an average of seven tanks and averaging annual product sales of 2.5 million gallons or less. In addition, a majority of these respondents plans to make significant investments for leak detection and tank upgrades in 1990, according to the survey.

The detection method of choice for 80 percent of respondents is manual inventory control plus tank testing. The second most popular method, chosen by 53 percent, is groundwater monitoring. (Overlap exists due the fact that many tank owners have implemented both options.)

A majority of marketers also has implemented leak detection for piping; as shown in Attachment 5, Exhibit 3, 41.7 percent of respondents indicate having leak detection for piping on all of their USTs. An additional 29.3 percent have detection for at least some of their sites.

PMAA's survey results also demonstrate that UST expenditures have risen steadily for four years, with the 1990 estimated expense averaging nearly \$80,000 (for the 80 percent of respondents reporting a 1990 estimate). This is up from the 1989 average of \$51,000 reported by 70 percent of the survey respondents. Taken together, the expense data collected on this survey would suggest that a conservative estimate would put marketer expenses on USTs at an average of over \$30,000 per year per marketer for four straight years by the end of 1990.

It is also instructive to note that the majority of respondents that reported having no leak detection at their USTs also report plans to make significant investments in 1990. While few of these marketers indicated spending money in prior years, fully two-thirds said that they planned to spend an average of over \$40,000 in 1990. Given the small size of these marketers, such sums are substantial and indicate the importance that they attach to upgrading their UST systems.

As small businesses, independent petroleum marketers do not have unlimited funds. PMAA's survey results show that they are taking their UST responsibilities seriously, and investing in activities that will have a palpable benefit to the environment. To ask these small businesses to make a similar level of investment in 1989 and 1990 to purchase insurance when other, less costly alternatives will be available in most states in the future results, we submit, in an insurmountable cost burden not commensurate with the risks posed. Finally, in considering whether marketers are truly burdened by the financial responsibility requirements, we hope you will also consider not only their UST compliance costs, but also the increased regulatory compliance costs imposed upon them pursuant to other statutory mandates. Reid vapor pressure controls, Stage II vapor recovery, community right-to-know and toxic reporting requirements, drug testing and hazardous materials transportation programs are all taking their toll on the independent segment of the petroleum marketing industry.

LENDER LIABILITY

PMAA is concerned about increasing reports (see Attachment 6) received from independent petroleum marketers in several states that their lending institutions are unwilling to make loans for underground petroleum storage tank purposes, including upgrades, replacements or remediation of releases. According to these reports, this unwillingness is based upon the lenders' concern about the potential liabilities they face as secured creditors in underground petroleum storage tank sites. We believe this concern is due in part to generalized fears about Superfund liability which reflect an unawareness of the substantial and important differences between the LUST Trust Fund and Superfund. A recent environmental guide published by the America Bankers Association articulates these fears as follows:

For many years, industrial and other commercial entities have stored heating oil, gasoline, solvents, and other chemicals in tanks located beneath the ground. In recent years it has become apparent that many of these tanks have leaked. Congress responded to public concern about this problem by requiring EPA to regulate underground storage tanks. The regulations impose construction, installation, leak monitoring, insurance and financial responsibility requirements for underground tanks.

Additionally, Congress provided \$500 million to EPA to pay for a government cleanup of past leaks from such tanks. EPA is empowered to recover the costs of these cleanups from the parties legally responsible for the leaks. The present owner or operator may be liable for this cleanup even if it was unaware that the tanks existed. Government agencies and courts are likely to construe this part of RCRA as broadly as Superfund and may extend liability to lenders, particularly if there is no other party available to pay the costs. (Managing Environmental Risk: A Practical Guide for Bankers, American Bankers Association (1989)). (Emphasis added.)

As you know, Congress was aware of lenders' Superfund-related fears when it established the LUST Trust Fund in 1986. Accordingly, it defined the term "owner" to exclude "any person who, without participating in the management of an underground storage tank and otherwise is not engaged in petroleum production, refining and marketing, holds indicia of ownership primarily to protect such owner's security in the tank." (42 U.S.C. 6991(b)) Thus, a bank or other lending institution that meets these simple conditions (i.e., is not engaged in the management of an underground storage tank, etc.) is not subject to cost recovery under the LUST Trust Fund. It would seem, therefore, that fears that the courts would extend liability to lenders for cleanup of underground petroleum storage tank releases under the LUST Trust Fund are not well founded.

Although the LUST Trust Fund contains language specifically designed to assure lenders that they will not be subject to "Superfund-type" liability associated with a security interest in an underground petroleum storage tank site, PMAA is concerned that

certain ambiguities contained in 40 CFR Part 280 give rise to what appear to be legitimate questions about lender liability under the underground tank regulations themselves. For example, Section 280.12 defines the term "owner" more broadly than and without reference to the protective statutory language applicable to lending institutions:

- (a) In the case of an UST system in use on November 8, 1984, or brought into use after that date, ["owner" means] any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
- (b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, ["owner" means] any person who owned such UST immediately before the discontinuation of its use.

Under 40 CFR Parts 280 and 281, "owners" of underground storage tanks share with "operators" compliance responsibilities associated with all aspects of the technical and financial responsibility requirements, including Subpart F, Corrective Action directives. Conceivably then, the regulations could be interpreted as requiring a lender, who has become an "owner" of an underground petroleum storage tank site based upon the exercise of its security interest only, to report any release to the implementing agency under Section 280.61 and comply with other release response and corrective action requirements under that Subpart. As an "owner" under the regulations, the lender could also be subject to a cleanup order issued by the EPA or the implementing agency. In such a case, the lender would be forced to choose between refusing the order on the one hand, or complying on the other. If the lender complies, then it actually becomes involved in the management of the site, making it ineligible for the unique protected status accorded to lenders holding a mere security interest under the LUST Trust Fund. If it refuses, it preserves its protected status but risks, among other things, public criticism.

This result is surely not what Congress intended when it sought to protect those who hold indicia of ownership primarily to protect their security interest in a tank site.

In view of the above, PMAA has requested that EPA issue a statement of clarification concerning lender liability under the underground storage tank regulations. We have asked that this statement, like the LUST Trust Fund, make clear that EPA will not seek cost recovery from lenders which are not engaged in petroleum production, refining and marketing and who do not participate in the management of an underground storage tank. It should also elucidate such a lender's responsibilities under 40 CFR Part 280. Since one of the primary objectives of cost recovery under the LUST Trust Fund "is to provide incentives for owners and operators to comply with technical and financial responsibility requirements" (Cost Recovery Policy for the Leaking Underground Storage Tank Trust Fund, OSWER Directive 9610.10, October 7, 1988) we would submit that it makes little sense to subject such a lender protected under the LUST Trust Fund to the requirements of Part 280.

Without such a clarification, we believe that the problems marketers are experiencing with their lenders will certainly become worse. Those who cannot obtain financial assistance will not be able to upgrade their tanks, and those who cannot upgrade their tanks will find it very difficult, if not impossible, to obtain insurance. Leaving the issue for the courts to decide is no solution, since the prospect of litigation and uncertainty is precisely what lenders are seeking to avoid in refusing to make loans for underground storage tank purposes.

In response to PMAA's request, EPA says it has ~~formed~~ a "task force" (composed of one person) to study the issue and decide whether any action need to be taken. We fear that in establishing a task force rather than taking decisive action, EPA is not placing the necessary priority on this important issue. Because decisive action on this issue does not appear to be forthcoming at EPA, we would ask this Subcommittee to consider looking into this critical issue.

TECHNICAL STANDARDS

The Hazardous and Solid Waste Amendments of 1984 extended and strengthened the provisions of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA) of 1976. One major portion of RCRA as amended, Subtitle I, provides for the development and implementation of a comprehensive regulatory program for petroleum underground storage tanks.

Under Section 9003 of Subtitle I, EPA was required to promulgate regulations applicable to all owners and operators of UST systems as necessary to protect human health and the environment. Section 9003(b) authorized the Administrator, in promulgating these regulations, to distinguish between types, classes, and ages of underground storage tanks. Section 9003 required EPA to issue design, construction, installation, and compatibility standards for new tanks, as well as requirements applicable to all tanks owners and operators concerning leak detection, recordkeeping, reporting, closure, corrective action, and financial responsibility. On September 23, 1989 the EPA issued final regulations to implement the mandates of Subtitle I (53 F.R. 37082). These regulations went into effect on December 23, 1989.

In developing an effective regulatory approach to petroleum USTs, EPA had to deal with several unusual aspects of the regulated community that created special problems for implementation and enforcement. According to the preamble of the September 23, 1989 rulemaking, these are as follows:

First, the regulated universe is immense, including over 2 million UST systems estimated to be located at over 700,000 facilities nationwide. Second, over 75 percent of the existing systems are made of unprotected steel, a type of tank system proven to be the most likely to leak and thus create the greatest potential for health and environmental damage. Third, most of the facilities to be regulated are owned and operated by very small businesses, essentially "Mom and Pop" enterprises not accustomed to dealing with complex regulatory requirements. Fourth, numerous technological

innovations and changes are now underway in various sectors of the UST system service community.

In view of these characteristics EPA had to develop a regulatory approach that was not only amply protective of the environment but also flexible enough to allow small businesses to comply without undue hardship. PMAA believes that, for the most part, EPA succeeded in achieving this goal.

o Leak Detection

The regulatory approach selected for the detection of leaks is, in a nutshell, one that requires the oldest tanks to apply leak detection within one year, and the newest no later than 5 years. Several leak detection options are provided. Pressurized piping is subject to stringent leak detection requirements, and must be leak detected by December 22, 1990.

There are some who believe that EPA's regulatory approach for leak detection is not stringent enough, and that its phase-ins are too generous. However, PMAA disagrees. As EPA recognized in the preamble to the rule, a more rapid phase-in would have been difficult, if not impossible for the vast majority of the regulated community to meet. And, as PMAA's experience with Stage II vapor recovery requirements shows, a more rapid phase-in would have resulted in drastic shortages of capital, equipment and contractors, as 700,000 facilities nationwide struggled to comply. The age-based phase-in schedule ultimately adopted by EPA ensures that implementation of the leak detection requirements will take place in an orderly fashion that will spread out the demand for equipment and services and avoid bottlenecks. Most important, it gives higher priority to older, unprotected tanks, which have been found to have the greatest potential to leak.

o Upgrade Requirements/Single Wall Standard

The requirement that existing tanks must be upgraded to new tank standards, i.e. corrosion protected, single walled tanks with spill and overfill protection, is also phased in over a ten-year period.

PMAA strongly supports EPA's decision to apply one nationally applicable standard -- protected single-walled tanks with leak detection, plus an upgrading program for existing tanks -- to regulate both existing and new tanks. The Agency chose the single-walled approach over the proposed "two-tiered" approach, which would have required secondary containment at sites in proximity to drinking water resources, and protected single-walled tanks elsewhere. The protected single-walled, nationally applicable standard provides badly needed flexibility to, and has the least financial impact upon, small businesses. In addition, reliable field and industry evidence indicate that the protected single-walled tank approach will amply protect health and the environment.

The two-tiered approach, on the other hand, with its stringent secondary containment requirements, would effectively have doubled the cost of the compliance in

affected areas, since the purchase and installation cost of double-walled tanks is roughly twice as much as that of protected, single-walled tanks (*Weston Report*, 1986). Yet, studies show that the high cost of double-walled tanks is not justified by any significantly greater leak protection benefits (53 Fed. Reg. 37102).

The two-tiered approach would have imposed severe burdens upon small businesses and would, we believe, have forced hundreds of small, independent petroleum marketers out of business, particularly in metropolitan or other largely populated areas in proximity to drinking water resources. The two-tiered approach would also unnecessarily have relegated the small business independent petroleum marketer to localities outside substantial population areas, leaving these areas to be served by large firms with greater financial resources. This would have a harmful effect on competition and been detrimental to the consuming public's best interest.

The protected, single-walled standard also is consistent with most state programs under development and is less complex than the two-tiered approach, and therefore most likely to maximize voluntary compliance. And, given the vast number of underground storage tanks affected by the proposal in the country, PMAA believes that it is critical to establish a regulatory approach that is as self-implementing as possible, consistent with protection of health and the environment. We believe that the protected, singled-walled standard achieves that careful balance, and urge in the strongest terms that EPA's decision in this regard not be altered by the Congress.

o Public Participation

Section 280.66 of the technical standards requires the implementing agency to provide an opportunity for public review and comment and allow for a public hearing if necessary, prior to approving a corrective action plan to clean up a release from an UST. PMAA has serious concerns about this requirement for two important reasons. First, it is in violation of the express intent of Congress. Second, it interferes with expeditious spill clean up.

During the course of the EPA's hearings, the Agency cited Section 7004 of RCRA as the source of authority for requiring public notice and hearings. However, Section 7004 was included in RCRA when the statute was originally enacted in 1976. The UST provisions -- Subtitle I -- were added much later in 1984, not because all RCRA provisions were deliberately intended to apply to petroleum or because RCRA was the perfect vehicle but because, politically, it was the only available environmental vehicle at the time. In fact, the 1984 Hazardous and Solid Waste Amendments specifically distinguish the UST program from RCRA Subtitle C through such means as 9003(b). When Congress reopened Subtitle I in 1986, it considered corrective action for petroleum in the context of establishing a trust fund. The concept of public notice and hearings for petroleum response related actions was specifically rejected when the House of Representatives defeated, during floor debate on Section 205 of SARA, an amendment by Congressman Bill Richardson that would have subjected every petroleum response action to notice and public hearing.

Furthermore, the requirement for public notice and hearings could result in major delays in remedying petroleum related leaks or spills. As a result, the regulations do not we serve one of the primary purposes of the underlying statute -- to provide for expeditious and effective remedial action. Particularly with lighter products which may migrate more quickly depending upon site specific conditions, time is of the essence in selecting and implementing the appropriate corrective action methodology. Delays can lead to increased costs and less effective recovery and restoration.

Accordingly, we would ask this Subcommittee to consider clarifying legislation that would require public notice and the opportunity for hearings in any case where implementation of an approved corrective action plan does not achieve the established clean up levels and termination of the plan is under consideration by the implementing agency.

SUMMARY AND RECOMMENDATIONS

In summary, PMAA is supportive of legislation and regulations designed to protect and preserve America's groundwater supply. Clearly marketers understand the importance of this as evidenced by the amount of money they have spent over the last three years and the amount of money they anticipate spending in 1990 on underground tank replacements, and leak detection. However, we believe there are several steps which can be taken to fine-tune the statutes applicable to UST related activities that will not only reduce the number of stations which may close as a result of these regulatory requirements, but also accelerate the level of tank replacement. Specifically, these recommendations include the following:

- (1) Delay the effective date of the financial responsibility requirements until at least December 22, 1991 to allow the continued advancement of the state trust fund approval process, to allow marketers additional time to continue to upgrade and apply leak detection to their tank systems, and to allow the insurance industry additional time to settle and stabilize. Again, we believe that S. 1560 provides a good starting point;
- (2) Amend Section 205 of SARA to allow LUST Trust Fund moneys to be used to assist the states, on a matching funds basis, in financing their UST trust funds and programs. This recommendation has several advantages. First, it will provide a strong federal incentive to those states that have not yet created their own fund. Second, it will help insure the financial stability of those state funds which have already been created but which may be under-capitalized. If additional revenue is needed for this purpose, one approach that bears close examination is revision of

Section 251(d)(2)(B) of SARA to allow the collection of the LUST tax beyond the current \$500,000,000 funding level. Taxes attributable to the LUST Trust Fund financing rate are likely to reach that level by this June, at which time the tax "triggers off". Another approach to obtaining additional revenue, if needed, would be to increase the LUST Trust Fund financing rate. Increasing the tax from the current 0.1 cent per gallon to a full penny would raise approximately \$900 million per year;

- (3) Create a low interest, environmental loan program for small businesses. This loan program would allow small businesses to avail themselves of capital to make the necessary changes in their businesses that are required by federal environmental statutes. The LUST Trust Fund could also provide the revenue to finance this program, which could be managed by the States under their UST programs;
- (4) Revise Section 205 of SARA and 40 CFR 280 to clarify lender liability issues;
- (5) Amend RCRA to clarify the requirements for public notification and hearings during the petroleum UST corrective action process in accordance with Congressional intent as expressed during the 1986 debate of Section 205 of SARA.

In closing, small businesses are the cornerstone of our nation's economy. In the case of petroleum marketers, they perform a vital service. Today's marketers are not asking for a bail-out or a hand-out at the public's expense. Rather, they simply ask that the environmental laws applicable to underground storage tanks be fine-tuned to allow them the chance to stay in business while operating in an environmentally safe manner.

Thank you and I would be happy to answer any questions you may have.

TESTIMONY OF LOIS N. EPSTEIN, P.E.
OF THE ENVIRONMENTAL DEFENSE FUND
BEFORE THE ENVIRONMENTAL PROTECTION SUBCOMMITTEE OF THE
U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
ON IMPLEMENTATION OF THE UNDERGROUND STORAGE TANK PROGRAM

February 20, 1990

INTRODUCTION

Good morning. Thank you, Mr. Chairman, for inviting the Environmental Defense Fund (EDF) to testify today on the implementation of the U.S. Environmental Protection Agency (EPA) underground storage tank program. My name is Lois Epstein and I am an environmental engineer with EDF's Environmental Information Exchange program, a program that works with state-level environmental groups around the country on issues involving toxic chemicals and solid wastes. Since the inception of the Resource Conservation and Recovery Act (RCRA) Subtitle I underground storage tank (UST) program, EDF's Environmental Information Exchange has been actively involved in its implementation, including submitting voluminous comments to EPA on proposed UST regulations, advising state agencies administering UST program requirements, working with citizen groups seeking to strengthen state-level UST programs, and speaking to audiences that include members of industry on technical aspects of the federal UST program. I was assisted in the development of this testimony by Robert Esposito, an EDF economist.

EDF is a non-profit environmental research and advocacy organization with over 150,000 members across the country. Through the combined efforts of its scientists, attorneys, and economists, EDF strives to eliminate all unnecessary exposures to toxic chemicals. To achieve this goal, EDF frequently participates in administrative proceedings, litigation, educational efforts, lobbying, and testimony before Congress on toxic chemical issues.

I am pleased you asked me to discuss implementation of both the technical and the financial responsibility aspects of the federal UST program. Too often recently, owners and operators of UST systems have not focussed their attention on upgrading and maintaining their tanks in a manner that prevents future leaks, and instead have spent inordinate amounts of time discussing their difficulties meeting the UST financial responsibility requirements. It is critical to prevent future leaks because the size of the current universe of leaking UST systems is extremely large: EPA estimated in 1988 that approximately 25 percent of existing UST systems would be found to be leaking if tested, or approximately one-half million systems. It is important to compare this number of UST-caused contamination incidents, 500,000, to the much smaller number of federally designated Superfund sites, about 1200 to date, and to the approximately 30,000 toxic waste dumpsites currently known to EPA, in order to evaluate accurately the extent of the UST leak problem.

Since approximately half the nation relies on groundwater as a source of drinking water, and close to 100 percent of the population in rural areas drinks groundwater, it is essential that UST leaks are rapidly stopped and cleaned up, and future leaks are prevented by effective state-level implementation of the UST technical requirements. The UST financial responsibility requirements supplement the UST technical requirements, because when the technical requirements fail to prevent leaks, the financial responsibility requirements ensure that resulting leaks are promptly remediated, thereby protecting our nation's groundwater.

IMPLEMENTATION OF UST TECHNICAL STANDARDS AND CLEANUP REQUIREMENTS

Based on our discussions with EPA and state UST personnel and with citizens across the country, we believe that states are actively enacting the legislative and regulatory requirements necessary to carry out UST programs. From an environmental protection perspective, however, the quality of the technical requirements enacted for UST systems varies widely among states. The primary reason this is true is that EPA promulgated weak, baseline technical requirements for UST systems, and many states realize they must issue more stringent technical standards than did EPA to ensure adequate environmental protection. In states without extensive financial and technical resources, however, it is difficult to retain the expertise necessary to improve on EPA's technical requirements. Moreover, some states are not legally allowed to be more stringent than the federal government in certain types of environmental rulemakings.

In several areas of the UST regulations, specific states have wisely exceeded EPA's technical standards. For example, seven states have required or have proposed to require secondary containment statewide for all UST systems, and numerous other states have secondary containment requirements for certain locations. Because secondary containment (i.e., an additional barrier beyond the tank wall and leak detection between the tank wall and the barrier) allows detection of leaks before the environment is contaminated, these states chose to exceed EPA's weaker leak detection requirements in order to decrease the number of contamination incidents that would require cleanup. Similarly, certain states have included heating oil and motor fuel tanks exempt from regulation under RCRA Subtitle I in their state UST programs (a position recommended by an EPA study), but not all states have regulated these tanks, principally because EPA has not required, nor aggressively encouraged, all states to do so. EDF believes there are technically and economically justifiable reasons for states to require more stringent and comprehensive technical standards for UST systems than those required by EPA.¹

Turning to the question of implementation of UST cleanup requirements, EDF is very disturbed that there has been little or no enforcement of non-compliance with the federal financial responsibility requirements for category II UST owners and operators (i.e., marketers with 100-999 tanks). The financial responsibility requirements of RCRA Subtitle I were intended to accelerate UST leak cleanups, since UST owners and operators would need to have mechanisms in place to guarantee prompt availability of funds for cleanups; without enforcement of the financial responsibility requirements, cleanup of UST-contaminated groundwater inevitably suffers. According to the Petroleum Marketers Association of America (PMAA), National Association of

1. See "Improvements to EPA's Underground Storage Tank Regulations: Advice to State/Local Regulators and Tank Insurers for Increased Leak Prevention," by Lois N. Epstein, published in the proceedings of the National Water Well Association/American Petroleum Institute conference on "Petroleum Hydrocarbons and Organic Chemicals in Ground Water: Prevention, Detection and Restoration," November 15-17, 1989, pp. 21-28 (copy attached). (Retained in committee files.)

Convenience Stores (NACS), and Society of Independent Gasoline Marketers of America (SIGMA) "Joint Survey of Gasoline Marketer Financial Responsibility" (February 1990), approximately 40 percent of the marketers required to meet the October 26, 1989 deadline for financial responsibility requirements currently have not done so. Marketers who are complying with the October deadline are thus at a competitive disadvantage -- it is therefore essential that EPA immediately adopt a more active enforcement strategy on this issue. Moreover, any changes to the financial responsibility requirements under consideration by this committee and by EPA plainly must not apply to category I and II firms that willfully disregarded their past-due financial responsibility compliance dates.

In an October 31, 1989 hearing before a subcommittee of the U.S. House of Representatives' Committee on Small Business, EDF stated its support for enforcement of the October 1989 financial responsibility deadline, and for EPA's financial responsibility phase-in timetable in general. EDF cited October 1988 EPA data which showed that almost all category II firms "either have insurance now or can buy it from providers already in the marketplace, on the condition that they upgrade their tanks to meet insurers' criteria."² EDF believes that the financial responsibility rule's deadlines have had a positive impact, by accelerating the development of private and state-level means of financial assurance, and by forcing tank owners and operators to meet preconditions to financial assurance coverage, such as tank design, testing and upgrading requirements, and site remediation requirements.

As an example of the positive effect EPA's financial responsibility deadlines and requirements have had, Conoco Inc., a major oil company, announced in September 1989 the availability of a pollution liability insurance program developed specifically for Conoco jobbers and dealers. According to Conoco, this program even exceeds EPA's financial responsibility requirements. Moreover, to hold down cleanup costs, Conoco's insurance program wisely includes a complete tank management consulting program that is designed to reduce the number of future UST system leaks.

IMPLEMENTATION OF THE UST FINANCIAL RESPONSIBILITY REQUIREMENTS

EDF continues to believe that the federal financial responsibility requirements are an essential part of the UST regulatory program. These requirements ensure there is ready access to the per-occurrence and aggregate amounts specified in the regulations for UST cleanups and for compensation of injured third-parties. The regulations allow leaks to be cleaned up without delay before questions of ultimate financial liability are resolved, thus limiting environmental damage. Corrective action funds are also readily available to provide alternate water supplies, if necessary, following contamination incidents.

EDF sympathizes with the difficulties small businesses may encounter obtaining financial assurance. Their present difficulties were not

2. 53 Fed. Reg. 43331.

unanticipated by EPA at the time of issuance of the financial responsibility regulations, however. In fact, EPA predicted that the types of state-level legislation now being developed might take the place of a mature UST insurance industry during these early years of UST program implementation. EDF has supported, to date, maintaining the deadlines developed by EPA for meeting the financial responsibility requirements.

Recent developments in the UST insurance industry have, however, caused EDF to reevaluate whether meeting the upcoming financial responsibility deadlines for tank owners in categories III and IV is feasible. In particular, the February 1990 announcement by Petromark, a major UST facility insurer, that it has been ordered by a court temporarily to cease writing new UST policies and possibly to give up its current UST policies depending on the results of a financial evaluation, could make it problematic for some category III tank owners and operators to meet the upcoming April 26, 1990 financial responsibility deadline. Additionally, while most states have been actively developing trust funds to enable tank owners and operators to meet EPA's financial responsibility requirements, less than 40 states have any type of trust fund enacted and only five of these funds have been approved by EPA with just two months to go before the category III deadline is reached.

EDF continues to believe that prompt implementation of the financial responsibility requirements is important and we strongly support increased enforcement of the category I and II deadlines. If the evidence presented to this committee and to EPA shows conclusively the infeasibility of large portions of the category III and IV firms meeting the upcoming deadlines, possibly because of an insurance industry "crisis" in conjunction with the lack of approvable state trust funds, EDF is prepared to support a short delay of the financial responsibility compliance dates until December 22, 1990 for category III firms and six months later for category IV firms. EDF believes that these dates are soon enough that pressure will remain on states to develop approvable trust funds promptly. These delayed compliance dates would need to be promulgated by a rulemaking, since all the requirements for a suspension of enforcement under RCRA Section 9003 do not appear to have been met (i.e., EDF does not know of any steps that are being taken to form a risk retention group³ for category III or IV tanks, as required by RCRA Section 9003(d)(5)(D)(i) in order for the EPA Administrator to approve a suspension of enforcement). As a general matter, EDF strongly disapproves of extensions to legally-enforceable deadlines; the unforeseen circumstances in the UST insurance industry have caused EDF to modify its stance in this single instance.

3. Under the Risk Retention Act of 1986, as amended, firms in the same industry may jointly establish a captive insurance company, a risk retention group (RRG), which offers members environmental liability insurance at favorable rates. A captive insurance company is established by a company or a group of companies to ensure their own risks or risks common to the group. Risk retention groups need only be chartered in one state in order to offer insurance in any state, unlike traditional insurance companies.

In conjunction with any delay in compliance dates, however, EPA must ensure that a mechanism exists to accelerate the development and approval of well-designed state trust funds to serve as transitional mechanisms until a mature UST insurance industry develops. Such trust funds must facilitate the goal of environmental protection (e.g., by accelerating prompt and effective cleanups, by lowered contribution costs for tanks with secondary containment because such tanks greatly decrease the likelihood of cleanups, etc.), must be sufficiently capitalized, and can contain elements, if desirable in certain states, to enable smaller businesses without environmental problems to remain solvent. EDF has several recommendations on how these funds need to be structured and the roles EPA and states should play in data collection and fund creation.

Most importantly, states need to utilize a reasonable means of calculation to ensure the trust funds are sufficiently capitalized, so states do not find themselves with potentially severe under-reserves (as Petromark could find itself, a company with several years more experience insuring UST systems than states currently have). If monies from the Leaking UST Trust Fund (Trust Fund) above \$500 million are used for a period of three years to provide an incentive for the formation of state trust funds and to partially capitalize these funds, as suggested today by SIGMA and NACS, Trust Fund dollars must be made available for payment of third-party liability costs, in addition to cleanup costs.⁴

During the October 31, 1989 hearing before a subcommittee of the U.S. House of Representatives' Committee on Small Business, the U.S. General Accounting Office advised EPA in its testimony to actively collect more data on compliance with the financial responsibility deadlines and not to rely exclusively on data from interested parties. EDF supports this recommendation, and also urges EPA to gather additional data that differentiates between category III and IV firms,⁵ in order to develop a "model" trust fund that can be readily adopted by states. Such a model fund may include provisions that differentiate between category III and IV firms, in addition to different phase-in dates for compliance. In developing its model fund, EPA should take advantage of the experience of state officials who are currently implementing existing state trust funds.

When comparing category III and IV tanks, EPA should examine types and ages of tanks, likelihoods of existing leaks, and costs of compliance with the financial responsibility requirements as a percentage of owner/operator income. In analyzing these types of data, EPA may find, for example, that category IV tanks should be rapidly upgraded with secondary containment in

4. The current RCRA statute does not allow Trust Fund dollars to be used to compensate third parties. If these dollars were used to capitalize state trust funds, use of state trust funds alone may not be sufficient to meet the federal financial responsibility requirements.

5. Some of EPA's data collection efforts may involve updating its Regulatory Impact Analysis for the financial responsibility regulations.

exchange for a later financial responsibility compliance date and lower financial responsibility compliance costs because of the reduced likelihood of releases to the environment from tanks with secondary containment.

If particular states are worried about the economic effects of gas station closures on communities, such states should collect data about the economic viability of their gas stations, statewide demographics including the percentage of the public relying on groundwater for drinking water, facilities that pose unacceptable environmental problems and should therefore be closed, etc. Armed with this information, states that place a high priority on maintaining the operability of rural gas stations can develop specific programs that allow these businesses to remain solvent. For instance, several states already have programs that help qualified small, rural businesses upgrade their UST systems through low- or no-interest loans. Likewise, state trust funds can be designed with lower deductibles for certain businesses, or with differential fees or tax structures.

It should not surprise this committee or EPA when, despite the best efforts of states and the insurance industry, some gas stations with serious existing environmental contamination problems are forced to close. The Regulatory Impact Analysis for the technical rule states that "most closures of existing outlets are caused by corrective action expenses,"⁶ not by the costs of upgrading to the technical standards, nor the added costs of meeting the financial responsibility requirements. From the perspective of environmental protection, facilities with extensive contamination problems and a lack of resources to address those problems pose unacceptable present and future risks to the environment and should be closed as soon as possible.

CONCLUSION

In summary, EDF has found that implementation of the UST technical requirements varies widely among states. Implementation of the financial responsibility requirements, important components of the federal program to protect the environment and human health from UST leaks, has also varied among states, with many, though not all, states actively developing trust funds and seeking EPA approval of these funds.

Any action by this committee or by EPA to delay the upcoming compliance deadlines for the financial responsibility requirements should not allow the category III compliance deadline to be later than December 1990. In the period prior to the compliance deadlines, EPA needs to increase the amount of guidance it is giving states that do not currently have approvable trust funds. EPA should be certain that all approved trust funds address environmental protection goals and are adequately capitalized. Right now, EPA needs to enforce the category I and II compliance deadlines for financial assurance.

6. 53 Fed. Reg. 37193.

Until the insurance industry acquires more actuarial experience with the ability of state-enacted technical requirements to minimize the effects of UST leaks, it may be difficult for all tanks to meet the UST financial responsibility requirements. This type of experience is likely to be acquired within a short period, however, given the large number of tanks regulated by the federal UST program. Prior to the development of a mature insurance industry, i.e., one that is able to insure tanks in all states and adequately differentiates in premium rates between the risks posed by different tank types, state trust funds may be the best means available to many tank owners and operators to comply with the federal financial responsibility requirements.

Respectfully submitted,

Lois N. Epstein

Lois N. Epstein, P.E.
Environmental Engineer

Robert Esposito/xne

Robert Esposito
Staff Economist



**NATIONAL
FARMERS
UNION**

STATEMENT

OF

JAMES MOENCH, LEGISLATIVE DIRECTOR
NORTH DAKOTA FARMERS UNION

BEFORE THE ENVIRONMENTAL PROTECTION SUBCOMMITTEE
OF THE U.S. SENATE COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS

My name is James Moench, Legislative Director for the North Dakota Farmers Union, a family farm organization with approximately 30,000 family farm members. North Dakota Farmers Union members have long been involved in the petroleum business through 122 local affiliated cooperatives, which are member-owned, and Farmers Union Central Exchange (CENEX), a regional cooperative serving the Upper Great Plains from Wisconsin to the Pacific Ocean, which they utilize to provide them with petroleum and other farm inputs.

Also with me today is Art Perdue, manager of the Farmers Union Oil Company of Minot, representing the North Dakota Farmers Union Oil Company Managers Association.

We, in the Farmers Union family, have long been concerned with environmental issues. We believe that the environment is an absolutely essential national resource which must be preserved and enhanced for ourselves and future generations. With this thought in mind, we support the efforts of the nation as a whole to clean up our environment and make land and water safe for our citizens to use. However, we have a series of concerns regarding the financial responsibility regulations for underground storage tank system protection, which were issued by the U.S. Environmental Protection Agency Office of Underground Storage Tanks.

No one can deny that a leaking petroleum storage tank is a serious problem and left unchecked could prove an ecological disaster. However, the method in which the current regulations address the problem disadvantage small, independent rural businesses, including locally-owned co-ops. These

regulations seem unnecessarily burdensome on these businesses.

Exhibit A, attached to this testimony, provides the average costs for meeting the EPA standards as compiled by the American Petroleum Institute. These average costs show that the upgrade of an existing tank to meet the current standards would cost from \$18,000 to \$35,000 and the replacement of these tanks could run between \$80,000 and \$120,000.

It has been estimated that these costs alone would force approximately one-fourth of the gasoline dispensing stations in the nation to close within two years. We in North Dakota have already suffered the loss of several major petroleum distributors. They have simply closed down their operations in North Dakota and moved to more lucrative, concentrated markets in larger metropolitan areas.

As we currently view the situation in North Dakota, the loss of one-fourth of the gas stations in the state would work a great hardship on many of our citizens. For example, at several locations in rural North Dakota, where the one remaining gas station appears to be closing, community residents would be forced to travel 15 to 25 miles in any direction in order to buy gas at a pump.

Heavy though these costs for upgrading or replacing tanks are, they are equal for all petroleum dealers, where the financial responsibility regulations favor the large dealer in the requirement for insurance coverages. A small dealer is required to post an excessively high bond or buy extremely expensive insurance to protect himself, even after replacing

his old tanks with a new protected system, while the major oil companies and large petroleum chains must merely show financial responsibility for their protection and suffer no cash outlay.

Insurance premiums are, at this point, very tentative. However, we have heard figures for oil cooperatives in North Dakota at between \$10,000 to \$30,000. For a large chain with many outlets, numbers in that range could easily pay for an employee, per outlet. The small independent is paying that cost for insurance coverage, placing them at a decided disadvantage in the fight for survival in the competitive petroleum retail markets.

The North Dakota state legislature, in its last session, attempted to help underground storage tank owners by enacting Senate Bill 1297, which established a Petroleum Tank Release Compensation Fund. The fund would reimburse qualified tank owner-operators for 90 percent of those costs they incurred which were greater than a \$7,500 deductible, and less than \$100,000. The fund only pays for clean-up costs and does not cover third-party liability. While this act may help for the initial costs of petroleum clean-up, the industry in North Dakota has not been able to obtain reasonable cost insurance just to provide the excess insurance above \$100,000 required by current regulations. (See Exhibit B)

In Exhibit C, I have provided a list of companies which currently market underground storage tank and pollution insurance. Of the nine listed, four market to very narrow groups ¹ auto groups, John Deere dealers, hospitals, etc. One has been rated as a financial question mark by insurance rating organizations, leaving four which provide some type of coverage which may

or may not meet EPA regulations. Our cooperatives complain that insurance coverage is difficult to obtain and very expensive for small petroleum dealers.

We need to allow more time to develop equitable solutions, allow state legislatures to react to the situation, and also provide private insurance companies the opportunity to better evaluate the costs for the possible risks which they would be covering.

We believe that environmental regulations should safeguard the environment against pollution and provide for pollution clean-up. They should not discriminate against small businesses, nor should they create an economic or competitive advantage for one class of business operation over another. Therefore, we would call on Congress to:

- (1) delay the implementation of the EPA regulations for one (1) year;
- (2) reduce the \$1,000,000 of mandatory coverage to \$500,000 or less, to be determined by EPA after further study;
- (3) study and recommend methods which would eliminate the need to insure for third-party liability and the catastrophic results which are incurred by such liability.
- (4) direct that the Environmental Protection Agency should examine the financial burden of complying with the technical standards and suggest ways to relieve that financial burden. The EPA must take into account the financial impact of its requirement and not disadvantage one group of petroleum dealers or another.

- (5) evaluate the necessity for carrying the mandatory high pollution control liability insurance coverages once a new protected system has been implaced.

In Exhibits D and E, we have provided resolutions from the North Dakota Farmers Union Board of Governors, adopted at their semi-annual meeting January 11, 1990 and the CENEX regional cooperative annual meeting, a policy statement adopted February 7, 1990.

We strongly support the recommendations which I have outlined above and would ask the committees favorable consideration of these issues.

Thank you very much for your time.

EXHIBIT A

Estimated Average Costs to meet EPA UST Regulations	
COMPLETE TANK REPLACEMENT (SITE WITH THREE SINGLE-WALL TANKS)	
Tank removal (including average transportation and permitting costs)	\$6,000-12,000
New tank installation (single-wall)	\$35,000-45,000
New tank installation (double-wall)	\$50,000-60,000
ADD CATHODE CORROSION PROTECTION	
Sacrificial anode system	\$1,500-3,000
Impressed current system	\$5,000-6,000
ADD LEAK DETECTION	
Inventory control (ongoing operating costs, per year)	\$200-300
Tank testing (not including modifications required for periodic testing)	\$450-600
Groundwater monitoring wells	\$500-1,500 per well
Soil gas monitoring wells	\$600-700 per well
Automated monitoring devices for above monitoring wells	\$5,000-8,000
Automated tank gauging devices	\$5,000-10,000
Line leak detectors (for all submerged pumps at a three-product facility)	\$500-600
TANK CLOSURE (SHUT DOWN SITE WITH THREE SINGLE -WALL TANKS)	
Tank removal	\$6,000-12,000
Site environmental assessment and certification	\$4,000-12,000
*The cost estimates noted above were compiled by the American Petroleum Institute. They represent national averages and in some cases local costs may be lower than the ranges suggest. For a more accurate estimate of costs in your area, contact Dahl & Associates, Inc. (612) 644-0019.	

EXHIBIT B

Earl R. Pomeroy
Commissioner of Insurance
 STATE OF NORTH DAKOTA
 600 E. BOULEVARD AVENUE - 5TH FLOOR
 BISMARCK, NORTH DAKOTA 58505-0320
 701-224-2440

O.J. "Bob" Olson, CIC
 ADMINISTRATOR

BONDING FUND
 FIRE AND TORNADO FUND
 PETROLEUM TANK RELEASE COMPENSATION FUND

PETROLEUM TANK RELEASE COMPENSATION FUND (PTRCF)

The PTRCF was established by the 1989 Legislature to financially assist petroleum tank owners and operators in the clean-up of petroleum releases. Participation in the Fund is mandatory for dealers only; it is optional for all other tank owners. The Fund reimburses to the qualified tank owner/operator 90% of those costs they have incurred which are greater than \$7,500.00 and less than \$100,000.00. The effective date of this bill was July 1, 1989. The Fund only pays for clean-up costs and does not cover third-party liability.

A tank which is used for storage of propane or for storing heating oil for consumption use on the premises where stored is excluded from this Fund. A farm or residential tank with a capacity of 1100 gallons or less, used for storing motor fuel for noncommercial purposes, is also excluded. The PTRCF covers both underground and above ground storage tanks. When registering tanks, the Fund needs the location and size of all tanks, whether they are above or below ground. The registration fee for underground tanks is \$25.00 and \$10.00 for the above ground tanks.

The fund was created by two revenue sources:

1. **Tariff Fee:** Imposing on dealers a tariff fee of nine-fortieths of a cent per gallon (3.79 liters) for every gallon of gasoline, kerosene, tractor fuel, heating oil except liquefied petroleum or diesel fuel subject to taxation. The tariff is collected on a monthly basis by the State Tax Commissioner.
2. **Registration Fee:** Imposing a registration fee on all owners or operators of petroleum tanks. The registration fees are paid to the Administrator of the PTRCF.

When the PTRCF has reached \$3,000,000 the tariff fee shall cease being collected until the fund balance falls below \$1,000,000; at which time the tariff shall be reinstated.

For further details regarding eligibility contact Bob Olson, Fund Administrator, at 224-4903 or 224-2440 or c/o State Insurance Department, 600 East Boulevard, Bismarck, North Dakota 58505-0320.

EXHIBIT C

Underground Storage Tank/Pollution Underwriters

February 14, 1990

This list represents underwriters who we believe are currently active in writing UST/pollution coverage in North Dakota:

- | | |
|--|--|
| 1. American Continental Insurance Company
2275 Half Day Road, Suite 320
Bannockburn, IL 60015
(312) 940-7550 | for hospitals only
UST coverage |
| 2. Employers Mutual Companies
717 Mulberry Street
Des Moines, IA 50303-0712
(515) 280-2511 | For NW Petroleum Dealers Group only
\$100,000 deductible; UST coverage |
| 3. Federated Mutual Group
121 East Park Square
Owatonna, MN 55060
(800) 533-0472 | Minimum premium - \$1,250 - \$2,500
minimum deductible - \$2,500 - \$25,000 |
| 4. John Deere Insurance Company
34th Avenue and 80th Street
Moline, IL 61265
(800) 447-0633 | John Deere dealerships |
| 5. Nationwide Group
One Nationwide Plaza
Columbus, OH 43216
(614) 249-7111 | Minimum premium - \$7,500,
minimum deductible - \$25,000;
UST/pollution coverage |
| 6. National Union Fire Insurance Company
70 Pine Street
New York, NY 10270
(212) 770-7000 | MGA - Fred S. James Co.
P.O. Box 1675
Harrisburg, PA 17105
(800) 255-7112 |
| 7. NoDak Mutual Insurance Company
1101 First Avenue North
Fargo, ND 58102
(701) 237-9466 | For farmowners only
UST/pollution coverage |
| 8. Petromark (Risk Retention Group)
Petroleum Marketa Mutual Insurance Co.
c/o The Planning Corporation
18347 Sunset Hills Road
Reston, VA 22090
(703) 481-0200 | Minimum deductible - \$5,000
minimum premium - \$2,200 |
| 9. Universal Underwriters Group
6363 College Boulevard
Overland Park, KS 66211
(913) 339-1000 | For auto dealers |

NOTE: This list may not be complete. Also the many variables in eligibility criteria and rating make it impractical to estimate eligibility of individual risk and actual premiums for individual risks.

EXHIBIT D

**North Dakota Farmers Union Board of Governors
Policy Statement — January 11, 1990**

As currently written, the financial responsibility regulations for underground gasoline and fuel storage tanks disadvantage small, independent rural businesses, including locally-owned cooperatives. The regulations also are unnecessarily burdensome upon these businesses.

The requirement that owners of underground storage tanks must have financial resources or insurance coverages of \$1 million gives major petroleum corporations an unfair competitive advantage over locally-owned businesses.

While major-brand, company-owned chain outlets can readily meet the financial resource requirements, smaller locally-owned, independent operators and agents have difficulty in securing and paying for the high cost, required insurance coverages.

Environmental regulations should safeguard the environment against pollution and provide for pollution clean-up. They should not discriminate against smaller businesses, nor should they create economic and competitive advantages for one class of business operations over another.

In recent years, many major petroleum corporations have left rural America as they consolidated and realigned their marketing regions. The financial responsibility regulations will further encourage the concentration of petroleum sales at the retail level, and will aggravate the loss of retail services in rural America.

To provide adequate time to develop more equitable solutions, we call for a minimum one-year postponement of the financial responsibility regulations for underground petroleum storage tanks.

During the interim, we call for Congressional study and review of the potential adverse economic impacts upon locally-owned, independent and cooperative petroleum retailers. The study should investigate alternative approaches to funding environmental clean-up costs of storage tank leakage. Such alternatives should be competitively neutral.

We also call upon the North Dakota state legislature to review the current state law establishing the underground tank compensation fund in order that it might more fully meet the federal financial responsibility regulations.

We further want assurances that once implemented, these regulations must be enforced even-handedly.

EXHIBIT E**CENEX Annual Meeting
Policy Statement — February 7, 1990****UNDERGROUND STORAGE TANKS**

We are concerned about the Federal Regulations on Underground Storage Tanks and the impact they will have on our local cooperatives. We are concerned and aware of the potential pollution problems that exist if an underground petroleum tank should leak. However, we request some changes in the financial responsibility section of the federal law because current provisions will cause widespread closures of retail petroleum outlets in small towns across the CENEX trade area.

The state and federal government has to assume a role to provide financial relief for accidental and involuntary petroleum related pollution leaks. Each state needs to provide an adequate and uniform fund to assist with the cleanup of spills.

We need to ensure that there is underlying coverage through state and federal funds so that cooperatives can purchase affordable coverage as needed.

We urge the Environmental Protection Agency (EPA) to give an adequate amount of time to comply with all provisions of the law. We also hope that they will be uniform in their enforcement of the regulations.



Agricultural Excess and Surplus Insurance Company

Senator Baucus,

I would like to answer your questions by starting with an examination of the basic problem. Then I'll address the specific points you want answered.

At the heart of this issue is the fact that many tanks (10 to 30% according to the E.P.A.) are currently contaminated. In the long run two things must be accomplished:

- First, the current contamination must be cleaned up at a cost of billions;
- Second, the current E.P.A. Technical Regulations must be implemented to minimize the chances of future contamination.

The current debate raging over the affordability and availability of insurance reflects a misdirection of the resources of the concerned parties. If the above two items were resolved, full insurance coverage (E.P.A.'s required coverage) at a \$1,000,000 limit should cost less than \$100 per tank per year with no shortage of insurance capacity.

Regardless of how the clean up issue is ultimately resolved, it appears clear that the public will have to pay the bill. If state funds handle the cost, a gas tax will raise the price at the pumps. If the tank owners handle the cost (either directly or indirectly through insurance), the higher operating costs will force prices to go up at the pumps. The major questions would appear to be, "Which method is fairer?", and "How long should the process take?"

Having examined the state funds of many states, it appears that there may be a compromise possible that blends the private and public sectors in a manner that is the most cost effective, the quickest and involves the smallest outlay of tax dollars. Agricultural Excess and Surplus Insurance Company's (AESIC) consultation with the number of states has lead to the attached proposal that AESIC has made to the State of Wisconsin to help resolve their problem. It represents one potential solution to the contamination problem.

The reasons I believe that this proposal can work are:

1. The gas tax mechanism is used to fund the smaller, more frequent clean ups that currently exist which are virtually uninsurable (at an affordable cost).
2. The insurance company insures the higher severity losses (as well as defense costs) at a relatively low premium (\$300 per tank in Wisconsin) because this is the loss size area that best fits true insurance risk transfer.
3. The clean up is handled cheaper because AESIC (which has experience in claims handling) can supervise this activity cheaper than the state can.
4. The clean up will be quicker because AESIC will advance the necessary money to start remediation and then AESIC will be reimbursed by the state fund. As an added benefit, small, cash poor tank owners will not face bankruptcy because of a clean up that they would have to pay for before the state fund would reimburse them.

In addition to Wisconsin, similar arrangements are being considered for Washington and North Dakota. AESIC would welcome the opportunity to work with any other states that have adequately funded state funds.

One note of caution, this proposed system might be able to reduce the clean up costs. But the nationwide bill for this clean up will still be massive. Attached is a copy of an Actuarial study of these costs for the U.S.T.'s in Vermont. While I suspect that this study errs on the high side, it does give one indication of the potential cost. A look at the administrative problems and loss cost over runs in the Florida program should reconfirm my earlier statements.

The program in the State of Oregon could serve as a prototype for solving the tank replacement problems for small or rural U.S.T. owners. In Oregon the state funding is used to help support private bank loans that are used for tank replacement. In this case AESIC has alleviated the Pollution Insurance fears of the banking community by offering a guaranteed rate (\$500 per tank for full EPA coverage) for the new tanks. Perhaps federal funding for a national program along these lines would be beneficial. AESIC would be willing to support such a program.

After this lengthy preface my answers to your six specific issues are as follows:

1. Failure to implement or a delay in implementing the EPA program will radically delay the clean up of the environment. Tank owners (especially small businesses) generally won't replace their tanks or clean up their sites voluntarily. The AESIC program was based on the premise that the Law would be enforced. Failure to enforce it will lead to a shrinkage of insurance capacity.
2. It is difficult to determine total insurance capacity, but our estimate is that over a billion dollars in capacity is currently available. Combining this capacity with the present state funds, there appears to be sufficient availability. We think suspension is not necessary.
3. Financial assistance for equipment or clean up from the private sector would not be effected by suspension, but public funding (state funds especially) would be harmed by suspension.
4. Affordability is difficult to define since it depends on the ability to pay. However, AESIC's rates are about \$500 per tank for U.S.T.'s that meet EPA's tougher regulations and about \$3000 per tank for unprotected, bare steel tanks over 20 years old. We think that the higher the risk the higher the premium.
5. The major obstacle keeping many small businesses from complying is the belief that EPA will delay or stop implementation of the regulations. In some cases the business cannot comply because the cost of the regulations would force bankruptcy.

6. The major impact on small businesses in rural areas would be diminished profits or closure of the business. While there maybe fewer service stations left, they would be cleaner and more efficient. The demise of many of these smaller operations maybe necessary if they cannot be upgraded to avoid pollution problems.

As for the alleviation of the problem, my previous comments offer a possible solution.

Richard C. Koscielak
Senior Vice President



Agricultural Excess and Surplus Insurance Company

February 19, 1990

Senator Jerome Van Sistine
State Capitol - Room 14 South
P. O. Box 7882
Madison, WI 53707

RE: POLLUTION INSURANCE
UNDERGROUND STORAGE TANKS

Dear Senator Van Sistine:

Thank you again for the opportunity of offering information to your committee about the availability and affordability of Underground Storage Tank (UST) pollution insurance in Wisconsin. This letter is to confirm our interest in working with the state of Wisconsin.

The Agricultural Excess and Surplus Insurance Company (AESIC), (Best's rating A +), a member of the Great American Insurance Group, is a nationally recognized company which specializes in out-of-the ordinary risks. We understand UST pollution exposures and have a skilled staff of technically trained underwriters and claims people.

We have come to realize how effectively your Petroleum Environmental Cleanup Fund Act (PECFA) functions, and now understand that our company can work with PECFA to provide UST pollution insurance for regulated tanks in Wisconsin. I personally wish to thank Mr. William Morrissey of DLUHR for explaining to me how PECFA operates on a day-to-day basis and supplying my office with supporting evidence of their work.

AESIC is ready to provide claims-made pollution insurance for owners and operators of federally regulated underground storage tanks in Wisconsin. This protection meets or exceeds the stringent EPA financial responsibility requirements.

Outlined below is one proposed basis for a program that would help solve the availability and affordability problems of the tank owners in Wisconsin. Obviously, many of these points will need to be refined or clarified.

Page 2.

1. Limits up to \$1,000,000 per occurrence and \$2,000,000 annual aggregate for each insured location. Limits to include \$200,000 per occurrence coverage from PECFA.
2. Defense costs of \$100,000 per occurrence with option for 250,000.
3. Rates averaging \$300 per underground storage tank.
4. Three-year policies with three-year guaranteed rates, if Wisconsin guarantees a 3 year program for AESIC.
5. \$5,000 per occurrence deductible.
6. Coverage for contamination that started before our policy effective date. However, no coverage is provided for sites that are known to be contaminated at the date our program starts.
7. Government mandated cleanup costs, both for on-site and off-site, and 3rd party liability.
8. Coverage for above ground storage tanks at rates to be determined.
9. Loading and unloading of underground storage tanks (Liability of tank owners only).

All federally regulated underground storage tanks located in Wisconsin are eligible for our insurance program except those located on sites the owner or regulatory authority already know to be contaminated.

AESIC will be responsible for settling all claims on behalf of our insureds and on behalf of those not insured by us, and then obtaining reimbursement from PECFA. This means a business owner will incur no more than the \$5,000 deductible in out-of-pocket costs and/or up front costs.

To help insure the success of this program we feel that the following points would be beneficial:

1. We will add the necessary staff in Wisconsin to handle claims.
2. We will work with the state to let owners know about this program.
3. We will simplify our application to allow ease of writing.
4. We will require very few prior inspections.

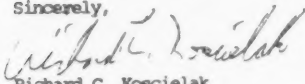
Page 3.

5. We will make a production effort in conjunction with the state of Wisconsin to write all eligible risks before April and October deadlines.
6. We will consider adding coverage for non federally regulated tanks.

The only other concern is that the state of Wisconsin guaranty that sufficient monies are available to PECFA to provide timely reimbursement to our company of all funds we have paid out on behalf of our Wisconsin insureds. If PECFA is allowed to become insolvent, AESIC is released from its obligations.

This letter was written quickly, recognizing the urgency of your deadlines, so it may not have addressed all of the concerns of you or your committee members. Please call me if you have any questions.

Sincerely,



Richard C. Koscielak
Senior Vice President

RCK:jt

cc: Senator Marvin Roshell	Senator Robert Jauch
Senator Lloyd Kincaid	Mr. James Klauser
Senator John Plewa	Mr. Patrick Osborne
Senator William TeWinkle	Mr. Gregory Krohm
Senator Brian Rude	Mr. James F. Young
Senator Margaret Farrow	

Vermont Underground Storage Tank Study
Table A: Summary of Cost Estimates

	Low	Medium	High
<u>Alternative I - State Pool only</u>			
State Pool Clean up/\$1.0 million:	\$6.7	\$10.5	\$13.7
State Pool Liability/\$1.0 million:	4.1	5.5	7.1
Total Alternative I:	\$10.8	\$16.0	\$20.8
<u>Alternative II - RRG only</u>			
RRG Clean up/\$1.0 million:	\$ 2.8	\$ 4.1	\$ 5.2
RRG Liability/\$1.0 million:	1.5	2.0	2.7
Total Alternative II:	\$ 4.3	\$ 6.1	\$ 7.9
<u>Alternative III - State Pool/RRG</u>			
State Pool Clean up/\$1.0 million:	\$ 6.7	\$10.5	\$13.7
RRG Liability/\$1.0 million:	1.5	2.0	2.7
Total Alternative III:	\$ 8.2	\$12.5	\$16.4
<u>Alternative IV - State Pool/RRG/Reinsurance</u>			
State Pool Clean up/\$1.0 million:	\$ 6.7	\$10.5	\$13.7
State Pool Reinsurance (Layer \$900,000 excess \$100,000)	1.7	2.3	3.1
RRG Liability/\$100,000	1.3	1.5	1.7
Total Alternative IV:	\$9.7	\$14.3	\$18.5

Note : The number of tanks covered under each alternative varies as follows:

- Alternative I: 6,048 registered and unregistered tanks in the State Pool
- II: only 2,051 tanks in the RRG
- III: only 2,051 tanks in the RRG
- IV: only 3,786 tanks in the RRG

STATEMENT OF
CONGRESSMAN IKE SKELTON
TO THE
ENVIRONMENTAL PROTECTION SUBCOMMITTEE
OF THE
U.S. SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

February 20, 1990

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO THANK CHAIRMAN BAUCUS AND THE MEMBERS OF THIS SUBCOMMITTEE FOR HOLDING THIS HEARING ON THE UNDERGROUND STORAGE TANK SITUATION. IN MY CAPACITY AS CHAIRMAN OF THE HOUSE SMALL BUSINESS SUBCOMMITTEE ON PROCUREMENT, TOURISM AND RURAL DEVELOPMENT, AND AS CHAIRMAN OF THE CONGRESSIONAL RURAL CAUCUS, I HAVE TAKEN A GREAT INTEREST IN THE IMPACT OF THE ENVIRONMENTAL PROTECTION AGENCY'S (EPA) REGULATIONS CONCERNING SMALL BUSINESSES, ESPECIALLY IN RURAL AREAS.

IN THE U.S. HOUSE OF REPRESENTATIVES, I HAVE THE HONOR OF REPRESENTING MISSOURI'S FOURTH CONGRESSIONAL DISTRICT. THAT DISTRICT CONTAINS TWENTY-ONE PRIMARILY RURAL COUNTIES, AND INCLUDES THE LAKE OF THE OZARKS AND THE HARRY S TRUMAN RESERVOIR. ALONG WITH AGRICULTURE, MUCH OF THE ECONOMY REVOLVES AROUND TOURISM AND THE SMALL BUSINESSES THAT SUPPORT THAT INDUSTRY.

MUCH OF MY CONCERN WITH THE EPA'S REGULATION OF UNDERGROUND STORAGE TANKS IS THE CLOSING OF SMALL, INDEPENDENT GASOLINE STATIONS. A MAJORITY OF THE POLLUTION LIABILITY INSURANCE THAT IS AVAILABLE IS UNAFFORDABLE AND THOSE RETAILERS WHO ARE ABLE TO USE NONINSURANCE MEANS OF DEMONSTRATING FINANCIAL RESPONSIBILITY REMAIN ONLY A HANDFUL. THE POLLUTION LIABILITY INSURANCE CRISIS HAS QUICKLY BECOME A BURDEN TO LARGE WHOLESALE MARKETERS OF GASOLINE. THE SITUATION IS EVEN WORSE FOR SMALL, INDEPENDENT RETAILERS.

IF A GASOLINE STATION IN A RURAL COMMUNITY WERE FORCED TO CLOSE BECAUSE OF THESE REGULATIONS, IT COULD HAVE A DETRIMENTAL AFFECT FAR BEYOND THAT OF FILLING AUTOMOBILES WITH FUEL. TOURISM TO AREAS SUCH AS THE LAKE OF THE OZARKS RELIES HEAVILY ON TRAVEL BY CAR, RECREATIONAL VEHICLE AND BUS. THE LOCAL RETAILER THAT SERVICES THESE VEHICLES IMPACTS THE ECONOMIC WELL-BEING OF THE LOCAL MOTEL, GROCERY STORE AND RESTAURANT. FOR THE SAKE OF THE RURAL TOURISM INDUSTRY, AFFORDABLE GASOLINE SERVICE STATIONS MUST REMAIN AVAILABLE.

FOR RURAL COMMUNITIES THAT HAVE NO TOURISM INDUSTRY, THE LOSS OF ONE OF THESE BUSINESSES COULD BE DEVASTATING. IN MANY SMALL COMMUNITIES IN MY DISTRICT THE SERVICE STATION MAY BE THE ONLY BUSINESS IN THE AREA. THIS SMALL BUSINESS MAY NOT ONLY SUPPLY GASOLINE AND SERVICE TO AUTOMOBILES, IT ALSO MAY BE THE ONLY PROVIDER OF GROCERIES, NEWSPAPERS AND OTHER ESSENTIAL GOODS. THE INCOME PROVIDED BY THE SALES OF FUEL WILL MANY TIMES ALLOW THESE RETAILERS TO SELL GOODS THAT MAY NOT OTHERWISE BE OFFERED IN THAT COMMUNITY.

THE EPA REGULATIONS WOULD ALSO IMPACT BUSINESSES THAT DO NOT PROFIT FROM THE SALE OF FUEL. I HAVE HEARD FROM MANY SMALL HOSPITALS STATING CONCERNS THAT THEY MAY NOT BE ABLE TO COMPLY WITH THE EPA REGULATIONS.

I BELIEVE THAT THERE MUST BE A DELAY IN THE IMPLEMENTATION OF THE FINANCIAL RESPONSIBILITY DEADLINES UNTIL DECEMBER 22, 1991. THIS WOULD ALLOW TIME FOR CONGRESS, THE EPA AND THE STATES TO IMPROVE TANK FINANCIAL ASSURANCES, EITHER BY STATE TANK TRUST FUNDS OR EXPANDED USE OF THE FEDERAL L.U.S.T. TRUST FUND. I ALSO HAVE MANY CONCERNS WITH THE WAY TANK CLEANUP COSTS HAVE SOARED IN RECENT MONTHS. THERE MUST BE WAYS TO STREAMLINE THIS PROCESS WHILE PROTECTING OUR ENVIRONMENT.

THESE MATTERS CAN AND MUST BE SOLVED. THE PROTECTION AND IMPROVEMENT OF THE ENVIRONMENT SHOULD BE OF UTMOST IMPORTANCE. HOWEVER, THESE REGULATIONS MUST BE DELAYED SO THAT THESE SMALL BUSINESSES CAN COMPLY.

AGAIN, I WANT TO THANK THE SUBCOMMITTEE FOR CONSIDERING THIS MATTER.

Statement of
The National Association of Towns and Townships
Presented to the
Senate Subcommittee on Environmental Protection
February 20, 1990

Mr. Chairman and distinguished members of this Committee, my name is Jeffrey Schiff. I am Executive Director of the National Association of Towns and Townships (NATaT), a national organization representing more than 13,000 general purpose local governments across the United States. These mostly small, mostly rural, communities are typical of the majority of the nation's 39,000 local governments. In fact, 85 percent of the nation's general purpose governments serve populations of less than 10,000, and fully half have less than 1,000 residents.

We are truly are a nation of small communities; small communities facing major challenges in meeting federal and state mandates for environmental protection.

I would like to focus my remarks today on one of those challenges: federal requirements governing underground storage tanks. I will explain the problems local governments face in complying with these requirements and discuss how S. 1560 and other actions being considered by the Congress may help small local governments cope with a myriad of federal requirements.

What is the problem?

With the passage of the Hazardous and Solid Waste Amendments in 1984 and the Superfund Amendments and Reauthorization Act in 1986, Congress mandated that the Environmental Protection Agency (EPA) develop technical standards for the removal of leaking underground storage tanks and for the construction and operation of new underground tanks. Pursuant to these laws, EPA established a ten

year implementation schedule, ending in 1998, for compliance by tank owners.

In addition, Congress mandated that EPA develop financial responsibility requirements directing owners to demonstrate their ability to finance corrective action and to compensate third parties for bodily injury and property damage caused by accidental releases from an underground tank. In the development of the regulations, EPA was directed to set coverage for particular classes or categories of underground storage tanks containing petroleum which should not be less than \$1,000,000 for each incident.

The EPA however, was given the flexibility to set lower coverage amounts for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum. In this determination, EPA was directed to consider the size, type, location, storage, and handling capacity of underground storage tanks, the economic impact of the limits on the owners and operators of each class or category of tank, and the availability of mechanisms for demonstrating financial responsibility.

As a result of its analysis, EPA will require, effective this October, all local governments to demonstrate that they have the financial capability to take any corrective action needed to safeguard a leaking underground storage tank. In addition, local governments will be forced to give financial assurances that they could compensate third parties for bodily injury and property damage caused by accidental releases from underground storage tanks. Regulations will require that this financial assurance be given at a level of \$500,000 per occurrence and an annual aggregate amount of at least \$1,000,000.

These requirements must be met by October 26 of this year, less than eight months from now.

Compliance Mechanisms

Local governments may demonstrate compliance with these requirements through a variety of mechanisms. Those mechanisms include the purchase of commercial insurance or participation in a state underground storage tank trust fund program.

Small local governments are now facing tremendous uncertainty regarding how they will demonstrate compliance with these requirements by October. Though environmental liability insurance is, in some markets available, the costs are prohibitive. According to a study conducted for the Minnesota Department of Public Service, annual premiums for insurance sufficient to meet the EPA financial responsibility requirements range from \$6,000 to \$12,000. Governments may find that annual premiums of this magnitude may be better spent replacing old underground storage tanks and thereby preventing future liability.

Most small communities' budgets are already stretched to the limit in their efforts to finance road and bridge repair and maintenance, police and fire protection, libraries, landfills, sewerage, and other services. Revenue sources available to these governments are typically those, such as the property tax, which show little annual growth. State laws may restrict substantially or ban additional revenue raising mechanisms. After ongoing expenses are paid, there are few, if any, funds left over. All expenditures must be budgeted carefully.

With the average revenues for small local governments serving a population of less than 1,000 approximately \$125,000 per annum, annual premiums for liability insurance will be a prohibitively expense.

Even if affordable commercial insurance were available, according to my sources in Minnesota, insurance companies will only insure those facilities where the owner can prove that the underground storage tanks are not leaking and that the surrounding soil is not contaminated. Essentially this means that the owner of the

tank must comply with all technical standards for underground storage tanks. Due to insurance considerations, this effectively compresses EPA's 1998 deadline for compliance with the corrosion protection and spill/overfill prevention regulations I discussed earlier to 1990.

This impending regulatory crunch threatens to disrupt every community's rational planning and budget process. Major planning and budget decisions cannot be made within a few months. The fiscal year for most governments is now more than half over. Sufficient unexpended or unallocated funds may not be available. Furthermore, the technical assistance needed to assist local governments in meeting this compressed compliance deadline may be unavailable or in short supply.

State Trust Funds Aren't the Full Answer

Local governments do have another option. They may participate in a state trust fund program. Unfortunately, state trust funds are not the panacea that EPA would lead us to believe.

Though local governments are covered directly or indirectly under many of the funds, they must comply with all federal technical and financial responsibility standards to be eligible for the state program.

Furthermore, state trust funds may not cover both corrective action and third party liability claims. For example, the Indiana, Kansas, North Dakota, and South Dakota state funds do not cover third party liability. In addition to limits on the types of coverage for corrective action and third party liability, all states have established deductibles and a ceiling for claims.

Current deductibles range from \$5,000 in Kansas and Wisconsin to \$100,000 in Indiana. A \$150,000 deductible for third party claims

must be met in Pennsylvania. At these levels, small local governments will still incur substantial expenses in the event of a release.

The ceilings covered in state UST programs also have a wide range, from a low of \$90,000 in North Dakota and South Dakota to the maximum of \$1,000,000 in Connecticut, Illinois, Indiana, Kansas, Michigan, Ohio, and Pennsylvania.

Since most of the state trust funds are designed as reimbursement funds, the potential financial pressures upon local governments are increased. Localities must pay all costs up front, then wait patiently for state reimbursement.

Many state trust funds are also limited in duration. For example, Indiana's fund expires July 1, 2001; Kansas's lapses on July 1, 1994. The Pennsylvania program extends for less than four years. It expires December 31, 1993.

Finally, Mr. Chairman, many of the state funds are limited in the total amounts that may be set-aside and paid. When the funds are expended, there is no money left, regardless of the needs of the applicant. The Illinois fund, for example, is limited to the dollars collected through a \$.003 fee per gallon of gasoline sold. In Kansas and South Dakota, the fund is capped by statute at \$5,000,000.

Self-Insurance Regulations Too Slow to Be Helpful

In October 1988, EPA indicated that it would develop a financial test to allow local governments to self-insure. This option, too, has been of diminished value. Almost 16 months have passed, yet no final regulations for the self-insurance program have been issued. Latest information available indicates that these regulations may not even be proposed until April.

As you may readily see, local governments are in a quandary. They are facing a fast approaching regulatory deadline. Given lengthy

delays in the rulemaking process, however, they do not know--even at this late date--whether they may be able to utilize one important alternative--self-insurance.

What Will Local Governments Do?

If insurance is not available or too costly, if state funds do not provide the solutions, if local governments cannot self-insure, where do we go from here?

Small local governments are currently faced with two options: try to secure a suspension of the regulations or face the threat of having storage tanks closed down by the federal or state government.

If the latter option is taken, a far greater risk to health and safety will occur than the problems these financial assurance regulations are designed to address.

The closing down of small government petroleum tanks would mean the interruption of many critical services for local citizens: fire, police, ambulance services, snow removal, and road maintenance. In addition, there would not be fuel, in many cases, for school buses. The consequences for citizens of small, often isolated, communities could be overwhelming.

S. 1560 Offers Local Governments Needed Breathing Room

S. 1560 takes the first step to address the problems both small local governments and small businesses will encounter in complying with EPA's financial assurance requirements. Local governments need the additional time this bill would provide to search for affordable commercial insurance, analyze the advantages of the state trust fund program, develop a self-insurance program, or craft another solution.

On behalf of small local governments in the United States, I urge you to act swiftly to approve this measure. In doing so, however, I would draw your attention to the need for one technical amendment.

Many communities are required by their charter or state law to comply with all appropriate federal and state regulations regardless of whether or not the regulations will be enforced. Delaying enforcement of the regulations, therefore, may not alleviate the impact felt by local governments to obtain financial assurance.

Rather than suspend enforcement of the law as S. 1560 proposes, the committee should consider delaying the effective date. EPA then should be required to evaluate specifically the availability and affordability for small local governments of the financial assurance mechanisms they have proposed.

Depending on EPA's findings, a determination should then be made as to whether small local governments should be required to demonstrate financial responsibility, and if so, what form this should take. When a new compliance date is set, EPA should provide at least six months public notice prior to enforcement of these regulations.

Mr. Chairman, the American public will not be placed at unreasonable risk if such a suspension were to occur.

Local governments have a major incentive for meeting the underground storage tank obligations in a timely manner: protection of their citizens' public health and safety. Unlike private businesses, governments are held accountable for their actions through the ballot box. Furthermore, local governments exhibit permanency and stability and are unable to void financial obligations through bankruptcy, unlike private businesses.

When faced with a leaking underground storage tank, local governments have demonstrated that they will protect their community. Through direct expenditure of dollars, bonding,

imposition of a special tax, or the use of other community resources or in-kind services, leaking tank problems are currently being addressed.

For these reasons, we strongly support S. 1560 as a responsible approach to the problems facing small local governments and small businesses.

A Comprehensive Solution Needed to Regulatory Problems of Small Governments

Mr. Chairman, this bill highlights an even larger problem small local governments are having with EPA, as well as many other federal agencies. This situation relates to agency compliance with the Regulatory Flexibility Act of 1980, (Title 5, U.S.C., Section 601-612), a law which requires regulatory agencies to analyze and consider the impact of proposed rules upon small governments, small businesses, and other entities, and to propose compliance alternatives, where appropriate.

EPA, in its regulatory flexibility analysis covering the UST issue is silent on the impact these regulations will have on small local governments, despite the requirements of the law to the contrary. Clearly, this is a very disturbing omission. Because of instances like this, Mr. Chairman, NATaT also supports passage of the Small Governments Regulatory Partnership Act of 1989, S.1758.

Under circumstances such as the one under discussion today, S. 1758, if adopted, would provide valuable regulatory relief to small governments. A director for small government advocacy, similar to the Small Business Administration's Chief Counsel for Advocacy, would be named to oversee implementation of this law to ensure that issues of concern to small local governments are not swept aside or ignored.

The bill also would close loopholes in the Regulatory Flexibility Act, as now written, to require that federal agencies describe the data they use in determining that a proposed regulation will have no

substantial impact upon local governments. In addition, a regulatory flexibility analysis would be mandatory in the event that a significant impact would be felt by small governments.

Mr. Chairman, if small local governments can have nothing else from Washington, D.C., these partners in the intergovernmental system should at least be assured that federal agencies are developing regulations with which towns, townships, and small cities can comply.

In a country as diverse as ours, it is unrealistic to expect or require that all localities respond to mandates in just one way. Local governments form the base upon which the success of our most vital national programs rest. We must work together to ensure that these governmental partners can protect the environment, health, and welfare of the citizens of this country while maintaining their financial stability.

We appreciate this opportunity to share our views with the Committee and urge that positive action be taken during this session to make certain that small local governments can comply with the underground storage tank financial responsibility requirements as well as other federal mandates.

I want to express my appreciation for the leadership you have taken in holding this hearing today. We stand ready to work with you, and the members of this Committee, as you move forward on this crucial issue of concern to all the nation's small communities and businesses.

NORTH DAKOTA PETROLEUM DEALERS and JOBBERS

A Division of NORTH DAKOTA RETAIL ASSOCIATION

1025 North 3rd Street • P.O. Box 1956

Bismarck, ND 58502

Telephone 223-3370



February 15, 1990

Honorable Quentin Burdick
Chairman
Committee on Environment & Public Works
Washington, D. C. 20510-6175

Dear Senator Burdick:

I understand that the complexities of coping and meeting current Environmental Protection Agency standards regarding "underground storage tanks" (UST's) will be before your committee on February 20.

Representing our Association membership of service station dealers, bulk oil jobbers, Convenience store owners/operators and truck stop owners in North Dakota, please permit me to enter our concerns in your committee's record.

We are united in firm support of S. 1560 introduced by Senator Conrad Burns (R-Mt) which deals with this complex issue. Without favorable consideration to S. 1560, Senator, many traditional independent petroleum marketers in North Dakota will simply go out of business. They cannot afford to both spend capitol investment to replace existing UST's AND meet the expensive insurance premiums for financial responsibility requirements.

The end result, Senator, is that in North Dakota when many smaller stations, convenience stores and truck stops will close, motorists will resort to carrying five gallon gas cans in their trunks in case the run out of gasoline on the way to the nearest petroleum retail outlet. Can you think of anything more dangerous to humanity than roving gas cans?

Senator Burdick, in addition to the support we want to express for S. 1560, we specifically urge your committee to UNANIMOUSLY demand from EPA the following consideration:

1. Grant a one-year postponement in the federal financial responsibility requirement of \$1 million insurance coverage. I'm confident that North Dakota's Legislature, when next in session, will consider increasing the upper limits of our existing Petroleum Release Compensation Fund to meet the EPA requirements. I'm sure many other

(2)

Honorable Senator Quentin Burdick
Chairman, Committee on Environment & Public Works

state legislatures will also be considering this insurance factor when in session this year.

2. If a formal postponement is not possible, at least get EPA to recognize financial responsibility requirements as a low-priority enforcement matter until July 1, 1991.
3. Have EPA consider reducing the ultimate on-site financial responsibility from \$1 million per occurrence to \$500,000 per occurrence. At least that ultimate liability may be more reasonable to acquire either privately or through a state fund, and still far exceed the average \$55,000 now spent nationally for each recorded petroleum spill or environmental cleanup in a station site.
4. Have EPA consider reviewing its requirements for third party coverage in financial responsibility. Total liability for both third party property damage and third party personal injury only is an invitation to the legal profession to chase environmental cleanups and urge questionably injured parties to initiate lawsuits.
5. Urge EPA to recognize the extreme burden they are placing on rural America. Not only are North Dakota petroleum marketers spending an average of \$15,000 PER TANK for total replacement, but their financial responsibility insurance quotes thus far have been a minimum of \$550 - 700 PER TANK for brand new quality tanks to \$1100 - 1500 PER TANK for a tank only 10-12 years old and still in good condition. Senator, most insurance underwriters also require policy holders to pay DOUBLE PREMIUMS the first year to allow the underwriter to create adequate reserve.

So, Senator Burdick, we need your Committee's FAVORABLE consideration of S. 1560. Please urge your Committee to accept the testimony by Mr. Art Purdue on behalf of all North Dakota petroleum marketers as an urgent plea for reasonable consideration from your Committee.

Sincerely yours,

Arthur W. Wheeler
Arthur W. Wheeler
President

THE OILMEN'S INSURANCE PLAN



A Division of OIL MARKETERS OF AMERICA RISK MANAGEMENT CORP.
350 Fifth Avenue, Suite 6805, The Empire State Building
New York, NY 10118, Tel: (212) 629-4290, Fax: (212) 629-3864

BEFORE THE
UNITED STATES SENATE
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

WRITTEN STATEMENT
OF
THE OILMEN'S INSURANCE PLAN

April 5, 1990
NEW YORK, NEW YORK

Oilmen's Insurance
Suite 6805
350 Fifth Avenue
New York, New York 10118
(212) 629-4290

Jane Jachimczyk
Peter J. Gerken

Re: Pollution Liability Insurance and UST's

BACKGROUND

Oilmen's Insurance is the product name for a range of property and liability insurance coverages designed expressly for independent re-sellers of refined petroleum products, i.e. oil marketers. Our universe of potential insureds would tend to coincide with the type of businesses that would belong to the Petroleum Marketers Association of America. Our average account would look like its average member.

The insurance we offer is sold in 30 states by independent agents who have been granted exclusive rights to represent this program. Policies are issued through the Fireman's Fund Insurance Companies and reinsured principally through Oil Marketers Insurance Company. Annualized written premiums excluding pollution insurance, are approximately \$35 million.

Pollution liability insurance on underground tanks has been offered as a separate claims made policy with a \$500,000 limit since late 1985. Very little of this coverage has actually been

sold because our underwriting and pricing were substantially tougher than competing programs since day one. Since that time however, the market has risen much closer to our pricing and underwriting practices.

Since the EPA financial responsibility regulations were first proposed, and specifically since the final rules were issued in 1988, we have been actively working to upgrade our pollution product. Our motivation has been twofold:

1. We wanted to be able to offer our customers a policy that would conform to EPA requirements, and
2. Our original approach to coverage of leaking underground tanks needed revision in light of the changing times, laws and technologies.

CURRENTLY, we are still hard at work on our new product and are hoping to finalize it within the next few weeks. However, we have had difficulty obtaining adequate reinsurance support and until all needed reinsurers "sign on the dotted line" we have nothing to sell. The purpose of these comments is to update you on what we have been trying to get accomplished.

INSURANCE IS A FINANCIAL MECHANISM, operating on the law of large numbers, that spreads a given risk among many similarly

situated entities. There are two main components of a premium dollar: expense (which includes administration and overhead, commissions and taxes) and loss (funds to pay for claims).

Underground storage tanks are difficult and expensive to insure because there are potentially huge losses and costs that need to be covered. There are two principle reasons that tank insurance premiums have "skyrocketed" over the past few years:

1. The early companies that wrote this kind of coverage for as little as \$100 per station didn't know what they were doing.
2. The cost of claims, clean up and potential third party liability was and continues to be more expensive than some people realized. Larger loss costs demand higher premiums.

In the short run these costs will increase. As stations are cleaned up and upgraded, it is our belief that loss costs and thus premiums will come down.

FROM AN INSURER'S POINT OF VIEW, the largest single risk in writing pollution insurance is that the tank could be leaking at

the time coverage is sold. Most of our work to date has been in determining how best to handle this problem so that we, Fireman's Fund, and our reinsurance partners are at ease.

We have determined that the most cost effective solution is statistical analysis of daily inventory reconciliation records for the purpose of seeing whether the tank is leaking today, before it is insured. We have associated with Warren Rogers Associates for this purpose.

If screening is not done to select out currently leaking tanks, a per tank premium of over \$7,000 would be necessary to fund the risk. It is our belief that those insurance companies no longer writing today, or those that are in trouble today, did not adequately deal with this reality.

STATE TRUST FUNDS need to understand this lesson as well, both in their underwriting and the amount with which they are funded. We believe that state funds have an important role to play and that their administrators must realistically evaluate prior contamination and clean up costs. A pollution clean up loss will not be likely to cost them any less than it does us.

We seriously question the role of state funds in the area of third party liability coverage. An insurer is supposed to protect the interests of its clients. A state fund has too many

conflicting interests to protect to do a proper job in the liability area. Lastly, we do intend to write our policy so that it could "wrap around" some state funds. Our limits will be discrete. We will not pay on behalf of state funds if they should begin to fold.

Oilmen's Insurance does not intend to insure prior contamination and that will be reflected in our underwriting, the language of our insurance policies and in our pricing. Premiums for fully upgraded facilities will be substantially less than those of a bare steel variety.

In addition to the initial screening, we will require that analysis of daily inventory reconciliation records be done every 30 days by Warren Rogers Associates so that new leaks can be discovered early and cleaned up quickly...on a much less costly basis. Since the vast majority of petroleum marketers keep these records on a regular basis, such an analysis should present no hardship. The cost of the independent analysis will be built into our premium.

IN SUMMARY, Oilmen's today does not offer coverage for underground storage tanks in conformance with EPA requirements. We have been diligently working on the development of such coverage but have been unable as yet to pull together necessary

reinsurance support. If and when we are able to do so, our product will be offered to petroleum marketers who buy the rest of the package of insurances that we sell. We can not sell it on a stand alone basis.

Furthermore, all applicants for this type of coverage will be screened carefully and the premiums charged will be adequate to cover both components of expenses and loss. To many oil marketers this process may seem onerous and expensive. We honestly don't like charging high prices any better than our customers will like paying them, but the bottom line here is that a "reasonable" price must be "realistic" otherwise we'll both be out of business.

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

WRITTEN STATEMENT OF MAX CLAY, PRESIDENT
THE PLANNING CORPORATION
ON THE
AVAILABILITY OF POLLUTION LIABILITY INSURANCE

February 20, 1990

I am Max Clay, President of The Planning Corporation, an independent insurance agency that specializes in the placement of Pollution Liability Insurance for businesses that store petroleum products. Since 1982, our agency has been the major producer of Pollution Liability Insurance for petroleum UST owner/operators.

Since February, 1988, The Planning Corporation has acted as underwriting managers for Petroleum Marketers Mutual Insurance Company (PETROMARK). PETROMARK is a Tennessee domiciled Risk Retention Group formed by petroleum marketers under The Liability Risk Retention Act of 1986.

PETROMARK is currently the major writer of "stand-alone" Pollution Liability Insurance on petroleum USTs throughout the United States. Through December 31, 1989, PETROMARK covered 1082 firms with 12,011 retail service stations and 47,818 underground petroleum storage tanks.

CURRENT STATUS

On February 7, 1990, the Tennessee Insurance Department placed PETROMARK under temporary supervision pending a second actuarial review of PETROMARK's loss reserves, which review will be completed within the next thirty days. The first actuarial opinion indicated that PETROMARK may be substantially under-reserved based on an

analysis of losses reported through December 31, 1989. At the present time, PETROMARK cannot write any new policies and can only renew existing policies for a sixty-day period.

EVOLUTION OF PRICING

In 1982, when The Planning Corporation began writing Pollution Liability coverage on USTs, there was no prior loss experience available to use in setting premiums. Therefore, initial premiums were arbitrarily established with the intention of modifying rates as loss experience developed. Annual premium for a policy providing \$1,000,000 with a \$5,000 deductible was initially set at \$100 per retail site. A typical retail site is a service station with 4 underground tanks.

Initially, claims activity was modest and the standard (\$1,000,000 with a \$5,000 deductible) per site premium increased at a leisurely pace, reaching \$300 per retail site in early 1985. From that point on, loss frequency and severity accelerated and premiums were adjusted accordingly, with the standard per site premium increasing to \$1,200 in early 1987.

Losses appeared to level off somewhat during 1987 with the standard per site premium reaching \$1,400 when PETROMARK began writing business on February 9, 1988.

Beginning in 1988, and extending through 1989, loss frequency began to increase dramatically. The adoption of stricter environmental regulations at the federal, state and local level, coupled with accelerating costs of an average cleanup, created a situation where frequent premium increases were required to keep premiums up to the level needed to cover losses.

PETROMARK increased premium rates six times between February 9, 1988 and February 1, 1990, with the standard per site premium rising from \$1,400 to \$8,580 - an increase of 613%. This figure of \$8,580 will only be sufficient if loss frequency does not continue to rise. Since the frequency of reported losses more than doubled between 1987 and 1989, a leveling off of losses over the near term appears to be an unlikely scenario.

It should be noted that PETROMARK is a not-for-profit, policyholder owned, mutual insurance company with comparatively low operating expenses. A standard insurance company providing coverage identical to coverage offered by PETROMARK would need to charge even higher premiums.

Much of the business written by PETROMARK covers larger petroleum marketers who can afford to purchase coverage with high deductibles, i.e. \$50,000 or greater. High deductibles have a great effect in reducing premiums, and, as a result, the average

per site premium paid by a PETROMARK policyholder in 1989 was only \$1,375. With contemplated rate increases in 1990, this average per site premium is expected to increase to approximately \$4,000. This amount, while much higher than previously charged, is probably still an affordable amount for larger UST owner/operators.

AVAILABILITY AND AFFORDABILITY

From 1985 through most of 1988, Pollution Liability Insurance on USTs was only offered by a very limited number of insurance companies. During that time period, and through today, more than 95% of all policies were written by either Federated Mutual Insurance Company or programs administered by our Agency.

Because many in the insurance industry currently perceive that the federal financial responsibility requirements will create a large demand for coverage, several additional underwriters have entered the market during the last few months, and several more are indicating their intention to do so.

We have previously testified that Pollution Liability Insurance is available to UST owner/operators. We continue to believe that this is the case, although availability will obviously be severely curtailed if PETROMARK is forced to withdraw from the market.

Until now, we have refrained from offering an opinion on affordability, believing that this was a more subjective evaluation. While we still do not want to categorize coverage with respect to affordability, we would like to provide some cost examples that apply to UST owner/operators who will be affected by the financial responsibility phase-in dates occurring in 1990.

While, as we indicated earlier, the average PETROMARK policyholder tends to be a larger UST owner/operator who currently may be in a position to afford to purchase a policy with a high deductible, most smaller UST owner/operators will not be able to fund a deductible above \$5,000 or \$10,000.

We estimate that a UST owner/operator purchasing a \$1,000,000 policy with a \$5,000 deductible will be faced with an annual per site premium in the range of \$10,000 to \$15,000 by the time the last phase-in date occurs in October, 1990. As can be seen, the ability to fund high deductibles gives larger UST owner/operators a substantial cost advantage when purchasing insurance.

INSURANCE OPTIONS

Some of the newer insurance entrants into this market will look at the experience of PETROMARK and claim that they can do better, citing insufficient underwriting, or other factors, as being responsible for the escalation of PETROMARK's premiums.

It is true that PETROMARK, and Federated Mutual, offer a very comprehensive policy, and that both companies insure many USTs that have been covered for years and that were initially insured when underwriting requirements were much more relaxed. To this extent, premiums have been driven up by losses from long-term insureds, which losses have been difficult to avoid.

It is possible to underwrite new business in such a way that an appreciable percentage of risk is screened out in advance. The technique that insurance underwriters generally agree will accomplish this is soil-testing at all sites as a prerequisite for coverage.

This underwriting approach creates two major difficulties for UST owner/operators. The first is that soil testing is costly, averaging approximately \$3,500 to \$5,000 per site. This pre-testing expense must be borne by the applicant with no guarantee that insurance will actually be effected. Given past operating practices relating to spills and overfills, most sites will have some level of existing contamination in the area around the tanks whether or not the tank is actually leaking.

Based on the results of soil testing, an insurance company may offer to insure some sites and decline to insure others.

If a UST owner/operator with several sites, after incurring a substantial expense for testing, can only obtain coverage on some sites and not others, financial responsibility requirements may not be satisfied and the UST owner/operator will be faced with immediate uninsured cleanup expenses. Again, larger UST owner/operators will get a break, since insurance companies tend to relax underwriting requirements when UST owner/operators purchase coverage with a high deductible.

We can now see that a larger UST owner/operator not only has a cost advantage because of his ability to fund a large deductible, but the ability to insure with a large deductible will make insurance easier to obtain from an underwriting standpoint. Conversely, the smaller the UST owner/operator, the more difficult insurance is going to be to obtain and the more it will cost per site.

Another way for an insurance company to write insurance on a profitable basis is to issue a policy that does not respond to most losses that occur in the early years that the policy is in force. This is done by including a retroactive provision in the policy that excludes coverage for leaks or contamination that starts before the policy becomes effective, regardless of whether or not the contamination was known by the insured. Since most contamination from USTs occurs over a period of time, policies with a retroactive exclusion will not cover most losses that are discovered during the first two or three years that a policy is in force. In this instance, the UST owner/operator may be able to obtain insurance that meets EPA requirements, but the insurance may provide "paper" coverage only and may be of little value in reimbursing the owner/operator when contamination is discovered.

In summation:

1. Insurance policies providing comprehensive coverage with realistic underwriting may have premiums that are driven to very high levels by loss experience;
2. Policies that require overly stringent and costly initial underwriting will only be available to a relatively small segment of UST owner/operators with new tanks and equipment, recently remediated sites or those purchasing policies with high deductibles;

3. Policies written with a retroactive exclusion will cost UST owner/operators a lot of money and afford little or no protection when a loss occurs.

OTHER OPTIONS

Responding to the entreaties of UST owner/operators citing real or perceived problems with insurance availability and affordability, many states have established tank funds that will reimburse UST owner/operators for all, or a part, of the amounts of coverage required by the EPA financial responsibility rules.

While the viability of state tank funds has not been fully established, state funds will probably be regarded by UST owner/operators as an acceptable alternative to insurance. Additionally, state funds eliminate a major cost advantage available to the larger marketer by applying the same deductible to all losses. The cost basis for coverage in a state fund, whether costs are computed on the number of tanks, or as a tax on fuel, then becomes equal regardless of the size of the owner/operator.

We believe that state tank funds are gaining status and will probably become major providers of EPA financial responsibility requirements by the end of 1990.

We would like to indicate, however, that state tank funds that generate their monies from tank fees, as opposed to some form of taxation, are probably going to encounter an escalation in fees similar to the escalation in premiums charged by insurance companies. Increasing loss frequency will probably cause state tank funds to keep returning to UST owner/operators for additional fees. This problem has apparently been recognized, and we note a trend towards the use of taxes to fund state tank funds.

Another alternative might be to expand the federal LUST fund to either "reinsure" state funds or provide direct reimbursement to UST owner/operators. The \$500 million scheduled to be placed in the federal fund seems excessive if monies are only to be used to cover "orphan" leaks.

CONCLUSION

As federal, state and local technical regulations are phased in on a large number of USTs, more contamination will be discovered and the liability exposure of UST owner/operators will increase. The cost of insurance coverage that provides any reasonable degree of protection continues to escalate and these costs may be becoming prohibitive for smaller UST owner/operators.

101ST CONGRESS
1ST SESSION

S. 1560

To suspend the enforcement of certain regulations relating to underground storage tanks, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 4 (legislative day, JANUARY 3), 1989

Mr. BURNS (for himself, Mr. SYMMS, Mr. HATCH, Mr. FORD, Mr. MCCLURE, Mr. DANFORTH, Mr. DOLE, and Mr. NICKLES) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To suspend the enforcement of certain regulations relating to underground storage tanks, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINANCIAL RESPONSIBILITY REGULATIONS.**

4 During the 12-month period following the date of the
5 enactment of this Act, the Environmental Protection Agency
6 shall take no action to enforce its underground petroleum
7 storage tank financial responsibility regulations promulgated
8 pursuant to section 9003 of the Solid Waste Disposal Act (42
9 U.S.C. 6991b) with respect to any underground tank owner

1 in category II, III, or IV. After the expiration of such 12-
2 month period, the Administrator of the Environmental Pro-
3 tection Agency may enforce such regulations if he determines
4 that the enforcement of such regulations against such owner
5 would not impose an unjustified economic burden on such
6 owner.

7 **SEC. 2. REPORT ON TECHNICAL STANDARDS.**

8 (a) The Administrator of the Environmental Protection
9 Agency shall conduct a study for the purpose of identifying
10 the principal economic difficulties associated with compliance
11 by underground tank owners with the technical standards for
12 underground storage tanks promulgated by the Environmen-
13 tal Protection Agency under the authority of section 9003 of
14 the Solid Waste Disposal Act (42 U.S.C. 6991b).

15 (b) On or before July 1, 1991, the Administrator shall
16 report to the Environment and Public Works Committee of
17 the Senate and the Merchant Marine and Commerce Com-
18 mittee of the House of Representatives the results of the
19 study conducted pursuant to subsection (a). Such report shall
20 include a detailed account of the economic difficulties identi-
21 fied pursuant to subsection (a), together with recommenda-
22 tions by the Administrator as to the best means of alleviating
23 such difficulties.

1 SEC. 3. AMENDMENTS.

2 (a) Section 9003(c)(6) of the Solid Waste Disposal Act
3 (42 U.S.C. 6991b) is amended by deleting everything after
4 "corrective action" and inserting in lieu thereof a period.

5 (b) Section 9003(d)(5)(A) of such Act is amended by de-
6 leting "less than \$1,000,000" and inserting in lieu thereof
7 "more than \$500,000".